

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

APPELLANTS' BRIEF AND JOINT APPENDIX

80

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 10,096

MADDIE MINOR, LUCILE BROWN, *et al.*, Appellants

VS.

THE WASHINGTON TERMINAL COMPANY, Appellee

APPEAL FROM THAT PART OF THE ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEE BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA IN RESPECT TO COUNTS 1, 2, 4, 5, 7, 8, 10, 11 AND 13 OF THE COMPLAINT.

United States Court of Appeals

for the District of Columbia

Circuit

FILED FEB 21 1949

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 10,096

MADDIE MINOR
LUCILE BROWN
BESSIE CRAWFORD
S. M. HUNTLEY
RUTH OGLESBY,

Appellants,

versus

THE WASHINGTON TERMINAL
COMPANY, INCORPORATED,

Appellee.

BRIEF FOR APPELLANTS

Jurisdictional Statement.

1. Jurisdiction is founded in the United States District Court for the District of Columbia inasmuch as the amount in controversy is in excess of \$3,000 exclusive of interest and costs.

2. The United States Court of Appeals for the District of Columbia has jurisdiction by virtue of Title 17, Chapter 1, Section 101, of the District of Columbia Code, 1940 edition.

Statement of the Case.

This appeal is from that part of an order for summary judgment entered by the United States District Court for the District of Columbia on December 9, 1948, granting summary judgment in favor of appellee—Washington Terminal Company—in respect to Counts 1, 2, 4, 5, 7, 8, 10, 11 and 13 of the complaint. (J. App. pg. 38.)

Appellants, Maddie Minor, Lucile Brown, Bessie Crawford, S. M. Huntley and Ruth Oglesby, are adults and residents of the District of Columbia. Appellee—Washington Terminal Company, is a corporation, resident in and doing business in the District of Columbia. Appellants filed an action in the United States District Court for the District of Columbia charging appellee with breach of contract in respect to a labor agreement entered into between appellee and the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers of the Railway Employees' Department, A. F. of L., an unincorporated voluntary labor association, effective January 16, 1943, for the benefit of those classes of appellee's employees to which appellants belonged and in which appellants were included, pursuant to the Railway Labor Act of May 20, 1926, and as amended. (J. App. pg. 3.)

In said action appellants sought injunctive and declaratory relief, discovery, and damages, and as grounds therefor charged appellee with breach of contract in respect to the seniority, reduction in force, classification, work-day and work-week provisions of said contract. (J. App. pg. 4 *et seq.*)

In answer to said complaint appellee denied any breach of said contract on its part in respect to the seniority, reduction in force, classification, work-day and work-week provisions of said contract, and as a further defense asserted:

“THIRD DEFENSE

As a separate and affirmative defense to the complaint, this defendant alleges that Rule 29 of the January 16, 1943 agreement * * * provides in part:

Should any employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic and superintendent, each in their respective order by the employe, the duly authorized local committee or his General Chairman, within ten (10) days * * *.

This defendant alleges that the plaintiffs and each of them failed to present or take to their foreman, general foreman, the master mechanic or superintendent, or any other official of this defendant, within the ten days provided for by Rule 29, their claim, as alleged in the complaint that they had been unjustly dealt with and that certain provisions of the January 16, 1943 agreement had been violated by the defendants, and that the failure of the plaintiffs to present or take up such claims as provided in said agreement constitutes a bar to the assertion of such claims in this action.” (J. App. pg. 31.)

Thereafter, appellee took the depositions of appellants and on November 20, 1948 filed its motion for summary judgment in its favor, asserting:

“Defendant Washington Terminal Company moves the Court that it enter, pursuant to Rule 56 of the Federal Rules of Civil Practice, a summary judgment in defendant Washington Terminal Company’s favor dismissing the action on the grounds that there is no genuine issue as to any material fact, and that the defendant is entitled to judgment as a matter of law, particularly in respect to the following:

1. Plaintiffs have failed to comply with the condition precedent in their respective employment contracts in that they did not present their grievances to this defendant in the manner and within the time provided in said contracts;

2. [*Matter not material on appeal*]. (J. App. pg. 32.)

Said motion was supported by points and authorities, including the pleadings and depositions on file therein.

In opposition to appellee's motion, appellants, except Bessie Crawford, opposed appellee's motion with their affidavits stating that appellee never furnished them with a copy of the union agreement, as provided by Rule 39, nor ever called its existence to their attention. (J. App. pg. 37.) And all appellants further represented in their opposition to appellee's motion their testimony set forth in their depositions taken by appellee and by memorandum stated:

1. That Rule 7 of the Federal Rules of Civil Procedure permits no reply to an Answer, but states that the court may order a reply to an answer. That, where a party is not permitted or required to file a responsive pleading, defenses raised by way of answer must be deemed controverted and in issue, and that plaintiffs have the right to introduce evidence in support of any matter which might have been set up in such responsive pleading had the same been permitted or required; that appellants, had the Federal Rules permitted, would have alleged facts supporting estoppel and excuse for non-performance of the condition precedent upon which appellee relies and a genuine issue of fact would have emerged.

2. That Rule 39 of the agreement between appellee and the union, aforesaid, provided:

"The railway company will have printed, in book form, copies of the agreement and furnish a copy to each employe affected."

that appellants in their depositions and affidavits presented evidence that the company never fulfilled its duty in furnishing said copy of the contract in spite of its promise to do so; that it was settled law that a party to a contract cannot escape liability under his obligation on the ground that the other party failed to perform a condition precedent to the establishment of such liability, or to the maintenance of an action upon the contract where he himself has hindered performance or that he has actually prevented it; that the record shows that appellee concealed the contract from appellants, and since said agreement was consummated long before appellants entered into the service of appellee, appellants could not be charged with knowledge, actual or constructive, of said contract; and that a person who, by concealing facts, induces another to act in a particular manner will be estopped to set up such facts to the other's prejudice. (J. App. pgs. 33, 34, 35.)

The record shows that appellee's motion for summary judgment came on for hearing in the District Court, which on December 9, 1948, granted said order. (J. App. pg. 38.) It is from this order that appellants appeal.

Statement of Points.

The Court erred in holding that there was no genuine issue as to any material fact between appellants and appellee and that summary judgment lay as a matter of law in respect to Counts 1, 2, 4, 5, 7, 8, 10, 11, and 13 of the complaint.

Summary of Argument.

Under Rule 56(c) of the *Federal Rules of Civil Procedure* summary judgment may be granted only when there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The Courts have defined the phrase "no genuine issue as to any material fact" to mean that there are no facts in dispute which would effect the determination of the cause, and that the facts must be ones on which substantial evidence may be offered to maintain; that the evidence presented by appellants in their affidavits and depositions herein reveal the existence of a genuine issue of material fact which precluded the granting of summary judgment in this case.

The second necessary condition for summary judgment to lie is, that the moving party must be entitled to judgment as a matter of law. The record shows that appellants by competent evidence as set forth in their affidavits and depositions charged appellee with failing to furnish them, as affected employes, with a copy of the agreement entered into between appellee and the union, wherein appellee obligated itself to have printed, in book form, copies of said agreement and to furnish a copy thereof to each affected employe. That appellee tendered no evidence that it complied with its obligation under the contract to furnish said contract copies to the affected employes, and in the absence of such evidence, appellee fell within the prescription of the rule of law that, where a party hinders or prevents the performance of the condition precedent of a contract, then, performance of the condition by the other party is excused. Hence appellee should not have been granted summary judgment as a matter of law.

Argument.

Rule 56(c) of the Federal Rules of Civil Procedure provides, in part, that in respect to summary judgment, that the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with affidavits, if any, show that except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. See,

Rule 56(c) *Federal Rules of Civil Procedure*, as amended March 19, 1948.

Thus two conditions must obtain in order for judgment to lie:

1. There must be no genuine issue as to any material fact;
2. The moving party must be entitled to a judgment as a matter of law.

POINT 1.

A genuine issue of material fact exists in this case.

While the authorities consider it impossible to state a general rule for determining when a genuine issue of material fact exists, nevertheless determinations are made depending upon the particular circumstances of each case. See,

3 Moore, *Federal Practice*, Sec. 56.04, 1938 edition. On the other hand, it is settled law that "material issues" are ones that are determinative of the whole case or a distinct branch thereof. See,

Third Nat. Bank v. American Equit. Ins. Co., 27 Tenn. App. 249, 178 S. W. 2d 915.

When the meaning of the phrase "a genuine issue of fact" came before the Court, on a motion for summary judgment,

in the *Firemen Mutual Insurance Company* versus *Aponaug Manufacturing Company* case, the Court held: motion for summary judgment raised question whether issues, though in law material, were "genuine" that is, such that substantial evidence can be offered to maintain. See,

Firemen Mut. Ins. Co. v. Aponaug Mfg. Co., 149 F. 2nd 359.

Accordingly the critical phrase in Rule 56(c) of the Federal Rules of Civil Procedure, "that there is no genuine issue as to any material fact" must mean that there are no facts in controversy as would effect the determination of the case, and (2) that the fact issue must be real, not feigned, and on which substantial evidence can be offered.

Applying the test, as indicated by the rule, to the facts of this case, it is contended that the necessary conditions for summary judgment to lie are not present. It is admitted and conceded that appellants failed to conform to the condition precedent of their respective employment contracts, which necessarily incorporated the terms and conditions of the labor contract consummated in their behalf, and that under different circumstances such non-compliance with provisions of the contract would bar any action thereunder. However, appellee assumed an obligation under the contract that it did not have to assume, when it committed itself to give the affected employees notice of said contract by expressly agreeing and promising under Rule 39 of said agreement, as follows:

"The railway company will have printed, in book form, copies of the agreement and furnish a copy to each employe affected"

(J. App. pg. 19.)

Appellants Maddie Minor, Lucile Brown, S. M. Huntley and Ruth Oglesby in their respective affidavits, filed herein in their opposition to appellee's motion for summary judgment, charged that appellee never furnished each of them,

nor any of them, with a copy of said agreement, nor did appellee otherwise bring the existence of said agreement to their knowledge during their respective periods of employment. (J. App. pg. 37.) Furthermore, in their depositions, appellants Lucile Brown (J. App. pg. 44), Bessie Crawford (J. App. pg. 50), S. M. Huntley (J. App. pg. 53), Ruth Oglesby (J. App. pg. 57), testified to the effect that they never received a copy of said agreement. Moreover, it is highly significant that at no stage of the proceedings has appellee tendered any evidence that it had complied with this provision of the contract. Thus, the critical issue, herein involved, is whether in the absence of a showing by appellee that it performed its contractual obligation to put affected employees on notice by furnishing each of them with a copy of said agreement, particularly when said agreement was consummated long before appellants entered into the service of appellee, that appellee can be heard to say that the failure of appellants to conform to the condition precedents of their respective employment contracts constitutes a bar to this action, and a ground for summary judgment in its favor. In the case of *Clair versus Sears, Roebuck & Co.*, the court held, that on a motion for summary judgment, a movant is not entitled to summary judgment unless the facts conceded show the right to a judgment with such clarity as to leave no room for controversy and show affirmatively that plaintiff could not recover under any circumstances. See,

Clair v. Sears, Roebuck & Co., 34 F. Supp. 559.

It is submitted that the facts of this case raise a material and genuine issue of fact as to whether appellants had knowledge of the contract and its administrative remedies, and that such issue was raised by whether appellee discharged its contract duty of furnishing appellants with a copy of said agreement, thereby putting appellants on notice as to its terms and conditions. Or simply stated as follows:

A contracts with B for the benefit of C, also promising B to deliver to C a copy of the contract. But A fails to deliver a copy of contract to C, as promised to B, and conceals its existence from C. But when C tardily discovers the contract and seeks to enforce its provisions, A defends on the ground that C has not complied with a condition precedent of the contract, notwithstanding A's failure to deliver said contract thereby putting C on notice as to its terms and conditions.

It is further contended that genuine and material issue was raised even though appellants failed to allege in their pleadings that appellee had failed to furnish a copy of said contract, as it had promised, for in the case of *Seaboard Terminal Corporation versus Standard Oil of N. J.*, the Court held that affidavits going beyond the complaint may be considered, if facts appear which would justify an amended complaint. See,

Seaboard Term. Corp. v. Standard Oil of N. J., C. A., 2nd, 1939, 104 F. 2nd 659.

In the instant case appellants proffered evidence on the material issue as to whether appellee had hindered or prevented appellants' performance of the condition precedent of their respective employment contracts by failing to give appellants notice of its existence, its terms and conditions, by failing to furnish them with a copy. In such a situation, it is not sufficient then, that the judge may not credit testimony proffered on a tendered issue, but it must appear that there is no substantial evidence on it; that is, either that the tendered issue is in its nature too incredible to be accepted by reasonable minds, or that conceding its truth it is without probative force. See,

Miller v. Miller, 74 App. D. C. 216, 122 F. 2nd 209.

POINT 2.

Appellee, moving party for summary judgment, was not entitled to judgment as a matter of law.

On a motion for summary judgment, under Rule 56(c) of the Federal Rules of Civil Procedure, it is not only necessary that there be no genuine issue as to any material fact, but it is also necessary, for the judgment to lie, that the moving party be entitled to such judgment as a matter of law. It has been shown by the text and references there made, *supra*, to the affidavits and depositions of appellants, that appellee failed to put appellants on notice as to the existence of said union contract, which was consummated, put into operation, and ante-dated appellants entrance into the service of appellee, by failing to furnish each of appellants with a copy of said contract, as appellee had obligated itself to do under Rule 39 of said agreement. Appellee has not proffered any evidence whatsoever that it complied with its contract duty, even after appellants charged in their affidavits and depositions that appellee failed to furnish them with a copy of said agreement. In the absence of evidence to the contrary, appellants' allegations and statements of fact in this regard must be presumed to be true, and thus the facts fall within the settled rule of law, that a party to a contract cannot escape liability under his obligation on the ground that the other party has failed to perform a condition precedent to the establishment of such liability, or to the maintenance of an action upon the contract where he himself has hindered performance, or that he has actually prevented it. See,

Amies v. Wesnofske, 255 N. Y. 156, 174 N. E. 436;

Moore County Carbon Co. v. Whitten, Civ. App., Texas, 1940, 140 S. W. 2nd 880;

Williston & Thompson, On Contracts, Vol. 3, Sec. 677. 1936 edition.

Moreover, where a person, who by concealing facts, induces another to act in a particular manner, he will be estopped to set up such facts to the other's prejudice. See,

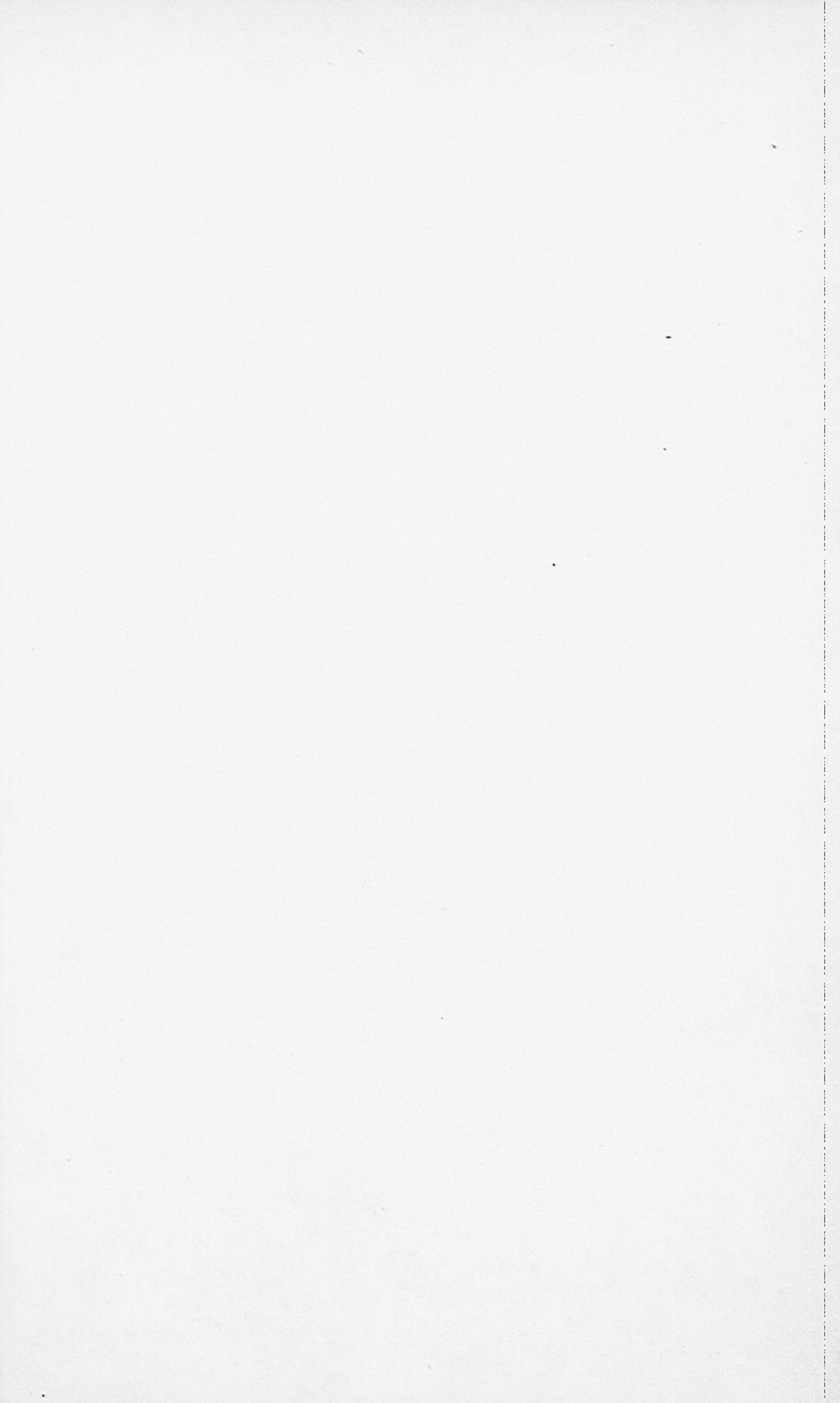
Flynn v. Roberts, 206 Ky. 655, 268 S. W. 351;

Tatum v. Caldwell, Civ. App., Texas, 1931, 40 S. W. 2nd 894.

Thus, on the basis of the foregoing authorities, it is submitted that appellee was not entitled to a summary judgment as a matter of law.

Wherefore, appellants respectfully submit that the judgment appealed from should be reversed in respect to Counts 1, 2, 4, 5, 7, 8, 10, 11 and 13 of the complaint.

CHARLES S. BROWN &
HUVER I. BROWN,
Attorneys for Appellants.



JOINT APPENDIX

Case No. 10,096

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JOINT APPENDIX**Case No. 10,096****161 DISTRICT COURT OF THE UNITED STATES****FOR THE DISTRICT OF COLUMBIA**

MADDIE MINOR, 1906 West Virginia
Ave., N. E., Washington, D. C.,
LUCILE BROWN, 1222 Fourth Street,
N. W., Washington, D. C.,
BESSIE CRAWFORD, 1826 Providence
Street, N. E., Washington, D. C.,
S. M. HUNTLEY, 1022½-6 Street, N. E.,
Washington, D. C.,
RUTH OGLESBY, 1509 Rosedale Street,
N. E., Washington, D. C.,

Plaintiffs,

vs.

THE WASHINGTON TERMINAL COM-
PANY, INCORPORATED, a corpora-
tion, Union Station, Washington, D. C.,
INTERNATIONAL BROTHERHOOD
OF FIREMEN AND OILERS, HELP-
ERS, ROUNDHOUSE AND RAILWAY
SHOP LABORERS OF THE RAIL-
WAY EMPLOYES' DEPARTMENT,
A. F. OF L., an unincorporated volun-
tary association, 101 Tremont Street,
Boston, Mass.,

*Defendants.*Civil Action
No. 4678-47.Filed
Nov. 17, 1947.

**Complaint for Damages for Unlawful Discharge, Unpaid
Wages, Conspiracy, Injunction and
Declaratory Judgment**

1. The plaintiffs are adult citizens of the United States and residents of the District of Columbia and they join in bringing this action because the grievances complained of

involve common questions of law and fact as to them hereinafter are more particularly set forth.

2. Jurisdiction is vested in this court inasmuch as the amount in controversy is in excess of \$3,000 exclusive of interest and costs.

3. The defendant, the Washington Terminal Company, incorporated, a corporation, hereinafter referred to as the Company, is a resident of, doing business in, and having an office in, the District of Columbia where now and heretofore it has engaged in interstate commerce and transportation as a common carrier.

162 4. The defendant, the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse, and Railway Shop Laborers of the Railway Employees' Department, A. F. of L., is and at all times referred to herein, a voluntary unincorporated labor association, hereinafter referred to as the union, with principal office at 101 Tremont Street, Boston, Massachusetts. It has numerous members exceeding 1,000 and a large number of local unions affiliated with it whose organization and existence is governed by its constitution and by by-laws promulgated by and binding upon it. It is now and all times referred to herein been engaged in doing business in the District of Columbia and, at the time of the grievances herein complained of occurred, said union was the statutory representative of the craft to which plaintiffs belonged by authority of the provisions of the "The Railroad Labor Act" approved May 20, 1926 and as amended, being Title 45, Chapter 8, Sections 151-188 inclusive of the United States Code.

5. The company now employs and at all times herein referred to has employed numerous employees among them being the classification termed *locomotive cleaners* which by the aforesaid Act and agreement, hereinafter set forth,

plaintiffs were classified. Under the provisions of said Act employees have the right to organize and bargain collectively through representatives of their own choosing and the majority of any class of employees has the right to determine who shall represent said class for the purposes of said Act. Pursuant to said Act the union became the duly designated and recognized bargaining representative for certain classes of employees which included the class of locomotive cleaners to which plaintiffs belonged. As such recognized representative, the company and the union entered into an agreement, effective January 16, 1943, for the benefit of all employees of the class which the union represented and to which plaintiffs were classified according to their duties. So far as plaintiffs have been able to ascertain said agreement is the whole contract between the parties, and a copy of said agreement is attached as plaintiffs' Exhibit A. A copy of the rules governing the relationship of the company with its employees as set forth in said agreement insofar as they affect the issues herein involved is as follows:

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Rule 25

"A separate seniority roster will be compiled for each sub-division at each point of employment and will show the names and date of entry of employees into the service of the railroad and date of promotion * * *"

Rule 13

"Seniority rights of all employees shall be confined to the point employed and four sub-divisions as follows:
* * *

(d) Engine House Laborers, Car Department Laborers, Coal Passers (Eckington and Ivy City Power Plants) Locomotive Cleaners * * *"

Rule 12

"Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the railroad, as hereinafter provided."

Rule 22

“* * * When force is reduced junior men will be laid off and the senior men capable of doing the work will be retained * * *”

Rule 11

“Seniority begins at the time the employee's pay starts.”

Rule 28

“The exercising of seniority to displace junior employes, which practice is usually termed ‘rolling’ or ‘bumping’ will not be permitted, except when a job is abolished or an employe is cut off, the employe affected shall have the privilege of displacing a junior employe on any shift.”

Plaintiffs allege that during their employment they were governed by the foregoing rules, and during their employment they abided by them and since these rules were instituted and agreed upon for plaintiffs' benefit they claim a property right in them. Plaintiffs further allege that upon information and belief the foresaid agreement governing hours of service and working conditions, in part set forth above, except in regard to wage rates which might be established from time to time as agreed upon by the parties and except to any possible secret agreement between the company and the union, constitute the entire contract between the parties.

6. Breach of Contract.

Plaintiffs allege that they had gained seniority over some other employees in their class and were entitled to all of the advantages, rights and prerogatives by virtue of such seniority and by virtue of the manipulations of the company the plaintiffs were replaced and deprived of their livelihood and source of income by employees with less seniority and junior to them notwithstanding the fore-

164 going contract. The company has failed, refuses and continues to refuse to abide by the provisions of said contract although often demanded to so do. Notwithstanding the preferential status and standing of plaintiffs in the company's employment, the plaintiffs were separated from their employment as a group on or about September 7, 1947 in total disregard of their efficiency, ability to do the work, and the provisions of said contract. Plaintiffs, who are females, allege that they were hired and entered into their duties during an acute shortage of available male workers of their class or craft of employment and that as the available supply of males capable of doing the work increased the company designed, instituted and systematically followed a course of conduct of coercion, oppression, intimidation and manipulation of status to the end that it would be easier to replace plaintiffs with male employees. Plaintiffs further allege that the company's course of conduct was well known and notorious among its employees for a long time prior to plaintiffs' separation from the service, and that the company's only reservation was as to the time when it would force, or otherwise cause plaintiffs' separation from its services. As a direct consequence of the company's action the plaintiffs herein have been deprived of their means of earning a livelihood and employment since on or about September 7th, 1947 to plaintiffs' damage.

7. Unlawful change of status.

Plaintiffs allege that the aforesaid agreement governing hours of service and working conditions nowhere provide for the classification of employees into categories of "regular" and "extra", and that they were employed by the company as "Locomotive Cleaners" and that notwithstanding the absence of said categories of "regular" and "extra" from the provisions of said contract, the company has

arbitrarily, wantonly, and ruthlessly so classified these plaintiffs. Rule 2 of the said agreement provides as follows:

“Normal working hours will be bulletined for all employees. Eight hours shall constitute the basic work day and not less than 48 hours will constitute a week’s work for all regular assignments.”

165 Plaintiffs aver that they qualified, entered upon and were assigned as “regulars” and by virtue of such classification and assignment they were entitled to and the company was bound to afford them regular and continuous employment of not less than eight hours per day and not less than six days per week and not less than fifty-two weeks in any one year; that the status of “regular” once earned, as plaintiffs herein did, then the company could only discharge them for cause, or, in accordance with the seniority provisions of the contract, as set forth in paragraph 5 above, and said provisions therein are hereby incorporated by reference. Plaintiffs have at all times faithfully carried out their duties and obligations under said contract provisions and that they have earned all the rights, privileges and benefits of said provisions and that they have a property right therein, and that it was the duty and the company is bound to faithfully abide by said contract. Notwithstanding the duty of the company to faithfully execute the terms and provisions of said agreement in regard to the plaintiffs, the company on or about November, 1946, reduced, demoted, and re-classified the plaintiffs to the category of “extra” in spite of plaintiffs’ protests and demand to the contrary, and in consequence of the company’s course of conduct plaintiffs suffered, irregular and intermittent employment, to-wit: less than eight hours per day, six days per week, and fifty-two weeks per year, to their damage in that plaintiffs’ earnings were unlawfully reduced and diminished by amounts reflecting the differ-

ence between plaintiffs' actual earnings and the amount they should have earned had the company not breached the contract.

8. Plaintiffs allege the defendant, the union, by virtue of the statutory duty imposed upon it by the "Railroad Labor Act" of May 20, 1926, as amended, it being Title 45, Chapter 8 of the United States Code, and particularly Sections 2 and 3 of said act, is bound to represent all classes or crafts of employees who it is duly authorized to and who it agreed to represent and that such representation must be in good faith and protective of the interests and property rights of all the employees it represents regardless of whether all such employees are members or are non-
 166 members of said union; that such representation comprehends and imposes a statutory duty upon said union to prosecute the grievances of all employees it represents, regardless of union membership, before all proper authorities empowered to settle and adjust them and irrespective of whether such authorities are contemplated by an agreement, by custom and usage, or by the aforesaid statute, regardless of whether the duty so imposed upon the union is adverse to the interests of its members. The union, defendant herein, assumed the statutory duty as statutory representative for the class to which plaintiffs belong, and pursuant to such statutory duty the union entered into and executed a collective bargaining agreement, effective January 16, 1943, with the company for the benefit of the class or craft to which plaintiffs belong. By the terms and provisions of said agreement and by the duty reposed by the statute aforesaid, in the event of a dispute between the employer and an employee or employees growing out of grievances, or out of the interpretation or application of agreements concerning rates, rules or working conditions, the union is bound and is charged with the duty of interceding on behalf of the interests and rights of the employee

or employees to the end that the matters in issue are adjusted. Notwithstanding the union's duty in the premises it failed, refused and neglected to prosecute the rights and interests of plaintiffs in said agreement, although often requested so to do, and with full knowledge of all the facts of the company's conduct disregarding the rights of the plaintiffs. To the contrary, plaintiffs allege on information and belief, and relying on such to be the facts, that the said union and the said company entered into a collusive combination, unlawful agreement and conspiracy, at a place and time unknown to plaintiffs, but at a time prior to the commencement of the grievances herein complained of, to deprive, destroy, and eliminate plaintiffs' property rights in the aforesaid agreement of seniority, status, and other contract benefits, which plaintiffs were led to believe governed the conditions of their employment to the end and
167 object in view of ultimately depriving plaintiffs of their livelihood and employment. Plaintiffs allege that from time to time prior to their separation from company's employment rumors were circulated among company's employees to the effect that plaintiffs as a group were to be discharged from their employment through various and sundry means and replaced with male employees. Plaintiffs however were never officially apprised of such intent on the part of the company but nevertheless plaintiffs were released and discharged from duty on or about September 7, 1947 as a group and were replaced with new and male employees with length of service and entry into employment junior to plaintiffs'. Plaintiffs at no time acquiesced in or consented to such derogation and deprivation of their property rights, but, to the contrary appealed to said union to protect their property rights and interests, which said union failed, refused and neglected to do, whereby plaintiffs have suffered grievous and irreparable damage.

Count 1

1. Plaintiff Maddie Minor repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 of the Complaint with like effect as if herein fully repeated.

2. Plaintiff Maddie Minor was hired and entered upon her duties on or about July 3, 1944 in the capacity of locomotive cleaner in the service of the defendant, the Washington Terminal Company, incorporated, a corporation, and was discharged by said company on or about September 7, 1947 when the said company notified plaintiff that her services were no longer needed. Plaintiff avers that such discharge was unlawful and a breach of contract to her damage.

3. Wherefore, plaintiff Maddie Minor demands judgment against the defendant, the Washington Terminal Company, incorporated, a corporation in the sum of \$2,000.00 together with costs.

Count 2

1. Plaintiff Maddie Minor repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5, and 7 of the complaint with like effect as if herein fully repeated.

168 2. Plaintiff Maddie Minor was hired and entered upon her duties on or about July 3, 1944 in the capacity of locomotive cleaner in the service of the defendant, the Washington Terminal Company, incorporated, a corporation. Subsequent to said date of hiring but a long time prior to November 1946, the defendant company classified plaintiff as a "regular" employee, and the plaintiff served under such classification until on or about November 1946, at which time the defendant company demoted and reclassified the plaintiff to the classification of "extra".

Said company continued to employ plaintiff so classified by it as "extra" until on or about September 7, 1947 when said defendant, the company notified plaintiff that her services were no longer needed. Plaintiff avers that such change of status, reclassification, or demotion to "extra" was unlawful and a breach of contract, and to her damage.

3. Wherefore plaintiff Maddie Minor demands judgment against said defendant, the Washington Terminal Company, incorporated, a corporation in the sum of \$2,500.00.

Count 3

1. Plaintiff Maddie Minor repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5, and 8 of this complaint, and the allegations contained in paragraphs 1, 2, and 3 in Counts 1 and 2 with like effect as if herein fully repeated.

2. Plaintiff alleges that her discharge and separation from the service of said company was unlawful and upon information and belief was the result of a collusive agreement between the defendant, the Washington Terminal Company, incorporated, a corporation, and the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers of the Railway Employees' Department, A. F. of L., an unincorporated voluntary association, entered into at a place and time unknown to plaintiff, to her damage.

3. Wherefore plaintiff Maddie Minor demands judgment against the said defendants in the sum of \$5,000.00,
169 a reasonable counsel fee, and the costs of this action.

Count 4

1. Plaintiff Lucile Brown repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 of the Complaint with like effect as if herein fully repeated.

2. Plaintiff Lucile Brown was hired and entered upon her duties on or about July 7, 1944 in the capacity of locomotive cleaner in the service of the defendant, the Washington Terminal Company, incorporated, a corporation, and was discharged by said company on or about September 7, 1947 when said company notified plaintiff that her services were no longer needed. Plaintiff avers that such discharge was unlawful and a breach of contract to her damage.

3. Wherefore, plaintiff Lucile Brown demands judgment against the defendant, the Washington Terminal Company, incorporated, a corporation in the sum of \$2,000.00 together with the costs of this action.

Count 5

1. Plaintiff Lucile Brown repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5 and 7 of the complaint with like effect if herein fully repeated.

2. Plaintiff Lucile Brown was hired and entered upon her duties on or about July 7, 1944 in the capacity of locomotive cleaner in the service of the defendant, the Washington Terminal Company, incorporated, a corporation. On or about July 1945 the plaintiff was reclassified, designated or promoted to the designation of "regular" by said defendant company, and plaintiff continued to be so designated and recognized by the said company until on or about June 1946 when the said company reclassified, demoted or redesignated plaintiff as an "extra". Plaintiff continued to be so classified until the defendant company notified plaintiff on or about September 7, 1947 that her services were no longer needed. Plaintiff avers that such change of status, demotion, or reclassification was unlawful and a breach of contract, and to her damage.

3. Wherefore plaintiff Lucile Brown demands
170 judgment against said defendant, the Washington
Terminal Company, incorporated, a corporation in
the sum of \$2,500.00.

Count 6

1. Plaintiff Lucile Brown repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5, and 8 of this complaint, and the allegations contained in paragraphs 1, 2, and 3 in Counts 4 and 5 with like effect as if herein fully repeated.

2. Plaintiff alleges that her discharge and separation from the service of said company was unlawful and upon information and belief was the result of a collusive agreement between the said defendant, the Washington Terminal Company, incorporated, a corporation, and the defendant, the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers of the Railway Employees' Department, A. F. of L., an unincorporated voluntary association, entered into at a place and time unknown to plaintiff, to her damage.

3. Wherefore plaintiff Lucile Brown demands judgment against said defendants in the sum of \$5,000.00, a reasonable counsel fee, and the costs of this action.

Count 7

1. Plaintiff Bessie Crawford repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5 and 6 of this complaint with like effect as if herein fully repeated.

2. Plaintiff Bessie Crawford was hired on or about June 24, 1944 and entered upon her duties immediately thereupon, in the capacity of locomotive cleaner in the service

of the defendant, the Washington Terminal Company, incorporated, a corporation, and was dismissed and discharged from the service of said company on or about April 24, 1947 when said defendant company forced her out of its employment. Plaintiff avers that such discharge was unlawful and a breach of contract to her damage.

3. Wherefore, plaintiff Bessie Crawford demands judgment against the said defendant company in the sum of \$2,500.00 together with the costs of this action.

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Count 8

1. Plaintiff Bessie Crawford repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5 and 7 of the complaint herein with like effect as if herein fully repeated.

2. Plaintiff Bessie Crawford was hired and entered upon her duties on or about June 24, 1944 in the capacity of locomotive cleaner in the service of said defendant company. Subsequent to said date of hiring but a long time prior to November 1946, the defendant company classified plaintiff as a "regular" employee, and the plaintiff served under such classification until on or about November 1946 at which time the defendant company demoted or reclassified plaintiff as an "extra". Said defendant company continued to classify and employ plaintiff as an "extra" until on or about April 24, 1947 when the defendant company forced plaintiff from its employment. Plaintiff avers that such change of status, reclassification, or demotion of her by the defendant company was unlawful and a breach of contract, and to plaintiff's damage.

3. Wherefore plaintiff Bessie Crawford demands judgment against said company, defendant herein, in the sum of \$2,500.00.

Count 9

1. Plaintiff Bessie Crawford repeats and realleges each and all the allegations contained in paragraphs 1, 2, 3, 4, 5 and 8 of this complaint, and the allegations contained in paragraphs 1, 2 and 3 of Counts 7 and 8 with like effect as if herein fully repeated.

2. Plaintiff alleges that her discharge and separation from the service of said defendant company was unlawful and that upon information and belief that such action was the result of an unlawful and collusive agreement between said defendant company and said defendant union, entered into a time and place unknown to plaintiff, to her damage.

3. Wherefore plaintiff Bessie Crawford demands judgment against said defendants in the sum of \$5,000.00,
172 a reasonable counsel fee, and the costs of this action.

Count 10

1. Plaintiff, S. M. Huntley repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5 and 6 of the complaint with like effect as if herein fully repeated.

2. Plaintiff, S. M. Huntley was hired and entered upon her duties on about April 26, 1945 in the capacity of locomotive cleaner in the service of the defendant company, the Washington Terminal Company, incorporated, a corporation and was dismissed and discharged from the service of said company on or about September 7, 1947 when she was notified by the company that her services were no longer needed. Plaintiff avers that such discharge was unlawful and a breach of contract to her damage.

3. Wherefore, plaintiff, S. M. Huntley demands judgment against said defendant company in the sum of \$2,500.00 together with the costs of this action.

Count 11

1. Plaintiff, S. M. Huntley repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5 and 7 of this complaint with like effect as if herein fully repeated.

2. Plaintiff, S. M. Huntley was hired and entered upon her duties on or about April 26, 1945 in the capacity of locomotive cleaner in the service of said defendant company, the Washington Terminal Company, incorporated, a corporation. Subsequent to said date of hiring and on or about August 1945, the defendant company classified plaintiff as a "regular" employee, and plaintiff served under such classification until on or about April 1946, at which time the defendant company demoted or reclassified plaintiff as an "extra". Said defendant company continued to classify and employ plaintiff as an "extra" until on or about September 7, 1947 at which time defendant company notified plaintiff that her services were no longer needed. Plaintiff avers that such change of status, reclassification, or demotion of her by the defendant company was unlawful and a breach of contract, and to plaintiff's damage.

173 3. Wherefore plaintiff, S. M. Huntley demands judgment against said defendant company in the sum of \$2,500.00.

Count 12

1. Plaintiff, S. M. Huntley repeats and realleges each and all the allegations contained in paragraphs 1, 2, 3, 4, 5 and 8 of this complaint, and the allegations contained in paragraphs 1, 2 and 3 of Counts 10 and 11 with like effect as if herein fully repeated.

2. Plaintiff alleges that her discharge and separation from the service of defendant company was unlawful and

that upon information and belief that such action was the result of an unlawful and collusive agreement between said defendant company and said defendant union entered into at a time and place unknown to plaintiff, to her damage.

3. Wherefore plaintiff, S. M. Huntley demands judgment against said defendants in the sum of \$5,000.00, a reasonable counsel fee and the costs of this action.

Count 13

1. Plaintiff, Ruth Oglesby repeats and realleges each and all of the allegations contained in paragraphs 1, 2, 3, 4, 5 and 6 of this complaint with like effect as if herein fully repeated.

2. Plaintiff, Ruth Oglesby was hired on or about September 16, 1943 and entered upon her duties immediately thereupon in the capacity of locomotive cleaner in the service of the defendant company, and was dismissed and discharged by said defendant company on or about September 7, 1947, when said company notified plaintiff that her services were no longer needed. Plaintiff avers that said discharge was unlawful and a breach of contract to her damage.

3. Wherefore plaintiff, Ruth Oglesby demands judgment against the defendant company in the sum of \$2,500.00 together with the costs of this action.

Count 14

1. Plaintiff, Ruth Oglesby repeats and realleges each and all of the allegations contained in paragraphs 1, 174 2, 3, 4, 5 and 8 of this complaint, and the allegations contained in paragraphs 1, 2 and 3 of Count 13 with like effect as if herein fully repeated.

2. Plaintiff alleges that her discharge and separation from the service of said defendant company was unlawful and that upon information and belief that such action was

the result of an unlawful and collusive agreement between said defendant company and said defendant union entered into at a place and time unknown to plaintiff, to her damage.

3. Wherefore plaintiff Ruth Oglesby demands judgment against said defendants in the sum of \$5,000.00, a reasonable counsel fee, and the costs of this action.

WHEREFORE, plaintiffs demand judgment as follows:

1. That defendants and each of them be required to answer the exigencies of this complaint;

2. A declaratory judgment that the defendant company has breached the terms of the seniority provisions of the contract between defendant company and defendant union, effective January 16, 1943;

3. That defendant company be required to pay each plaintiff such damages as each plaintiff has sustained in consequence of each of its unlawful discharges by said defendant company;

4. That defendant company be required to pay to each of plaintiffs, Maddie Minor, Lucile Brown, Bessie Crawford, and S. M. Huntley, such damages sustained in consequence of the company's changing their status from "regular" to "extra", and back wages from the date of such change of status, and/or to account for and pay over to each of them all accumulated back wages each plaintiff has earned or would have earned from the time when they were unlawfully deprived of their permanent or "regular" status, minus any monies that they actually received, or such damages as to the Court shall appear proper under the provisions of said Act, agreement between defendant company and defendant union plus any amount found to be due each of them from the records of the said company;

5. That both defendants be required to deliver up and discover copies of the original agreement, all supplemen-

175 tary agreements, if any there be, in their possession or under their control, bearing on the contract between the company and union, or employees, entered into and under which said plaintiffs were bound to observe, dating from consummation of said contract down to present time.

6. That defendant company be required to deliver up, during the pendency of this action, on the request of plaintiffs, severally and jointly, the following records:

1. Plaintiff's time cards from the commencement of service to the date of separation;

2. All time records and other records indicating the hours of service, rates of pay, payroll vouchers, receipts for payment of wages, cancelled checks, payroll books, ledgers and other records indicating the wages paid to plaintiffs for the entire period of their employment;

3. All other books, papers, records, documents, and agreements which may be pertinent to the issues herein, and which will reveal the number of hours of employment, wages paid, and employment status, including seniority rosters for locomotive cleaners, laborers and other classes usually considered in competition with plaintiffs for seniority, for the years of 1943, 1944, 1945, 1946 and 1947.

4. Names and dates of entry of all locomotive cleaners and other classifications on same roster with plaintiffs and their present status with the company.

7. That plaintiffs demand a mandatory injunction against the defendant company requiring said company to reinstate each of them to their former status of "regular", permanent employees with regards to their respective seniority rank and be recognized by the company as though they had never been unlawfully removed from their status as "regular" employees, and not be prejudiced in anywise by their separation from their employment.

8. That the defendants pay to the plaintiffs the costs of this action and reasonable attorney fees, and that reasonable attorney fees be allowed to plaintiffs by this Court;

9. That plaintiffs have such other and further relief as to the Court seems just and proper.

/s/ MADIE MINOR
 /s/ LUCILE BROWN
 /s/ BESSIE CRAWFORD
 /s/ S. M. HUNTLEY
 /s/ RUTH OGLESBY
Plaintiffs

HUVER I. BROWN
Atty. for Plaintiffs,
 811 Florida Ave., N. W.
 Washington, D. C.

177 PLAINTIFFS' EXHIBIT RULE 29.

Should any employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic and superintendent, each in their respective order by the employe, the duly authorized local committee or his General Chairman, within ten (10) days. If stenographic report of investigation is taken the employe or local committee shall be furnished a copy. If the result still be unsatisfactory, the duly authorized general committee, or their representative, shall have the right of appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within ten (10) days of application.

177 PLAINTIFFS' EXHIBIT RULE 39.

The railway company will have printed, in book form, copies of the agreement and furnish a copy to each employe affected.

Filed

DEC 29 1947

**178 Answer of Defendant, The Washington Terminal
Company, Inc., a Corporation**

Comes now the above entitled defendant, The Washington Terminal Company, Inc., a corporation, by its attorneys, Hamilton and Hamilton, and for answer to the complaint filed herein alleges that:

First Defense

The complaint does not state a claim upon which relief may be granted.

Second Defense

1. This defendant is without knowledge or information sufficient to form a belief as to the allegation that plaintiffs are adult citizens of the United States and residents of the District of Columbia. This defendant denies the remaining allegations of paragraph 1 of the complaint.

2. This defendant denies the allegations of paragraph 2 of the complaint.

3. This defendant admits the allegations of paragraph 3 of the complaint.

4. This defendant admits that the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse
179 and Railway Shop Laborers of the Railway Employees' Department, A. F. of L., hereinafter referred to as defendant union, is, and was at the times referred to in the complaint, a voluntary unincorporated labor association and which is and, at all times referred to in the complaint, was engaged in doing business in the District of Columbia and was, at the times alleged in the complaint, the representative, pursuant to the Railway Labor Act, of the craft to which plaintiffs belonged. This defendant is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 4 of the complaint.

5. This defendant admits that it does now employ, as it did at all times referred to in plaintiff's complaint, numerous employees, including locomotive cleaners. It admits that under the provisions of the Railway Labor Act this defendant's employees have the right to organize and bargain collectively through representatives of their own choosing, and that the majority of any class of employees has the right to determine who shall represent said class for the purposes of said act. It further admits that defendant union, pursuant to said act, became the duly designated and recognized bargaining representative for certain classes of defendant's employees, including locomotive cleaners. This defendant further admits that it and defendant union entered into an agreement effective January 16, 1943, (a copy of which is set forth as Exhibit A in the complaint) which set forth certain rules governing the hours of service and working conditions of those of its employees, including plaintiffs, represented by defendant union during the periods of their respective employment, and that the said agreement, except with regard to rates of pay, constitutes the sole and entire agreement between said defendants. This defendant further admits that 180 the rules and portions of rules quoted in paragraph 5 of plaintiff's complaint are a part of the rules provided for in said January 16, 1943 agreement, but it denies that said quoted rules and portions of rules are the only rules provided for in said agreement which govern or governed the relationship of this defendant and its employees insofar as the issues in this case are concerned. This defendant denies that, at all times referred to in the complaint, it employed plaintiffs as locomotive cleaners. This defendant denies each and every one of the remaining allegations of paragraph 5 of plaintiff's complaint, which it has not herein expressly admitted.

6. This defendant admits during the term of their respective employment, plaintiffs became senior to certain

other employees of this defendant at the point where, and within the subdivision in which they were employed, that they are females and that they were employed by and entered into the service of this defendant at a time when there was a shortage of available male workers. This defendant alleges that plaintiffs have never been discharged; that plaintiff Bessie Crawford voluntarily left the service of this defendant upon her resignation on April 24, 1947; and that because of a reduction in force, and in accordance with the above referred to January 16, 1943 agreement, plaintiffs Ruth Oglesby and Meddie Minor were furloughed on or about September 15, 1947, and plaintiffs Lucile Brown and S. M. Huntley were furloughed on or about September 8, 1947. It further alleges that plaintiff Bessie Crawford lost her seniority upon her voluntary resignation from defendant's service, but that the other plaintiffs have continued to retain their seniority since they were furloughed in September, 1947; that plaintiff Ruth Oglesby was senior to the other plaintiffs and that, in accordance with the provisions of the above referred to agreement of January 16, 1943, she was notified by this defendant under date of December 12, 1947, of a vacancy in the position of extra laborer to clean diesel locomotives, and that on December 18, 1947 she returned to the active service of the defendant. This defendant denies each and all the remaining allegations of paragraph 6 of plaintiff's complaint, which it has not herein expressly admitted.

7. This defendant admits that the above mentioned agreement of January 16, 1943, does not provide for the classification of its employees into the categories of "regular" and "extra", but it denies that the use of such classifications violated the terms of said agreement or deprived plaintiffs of any rights thereunder. It admits that during a part of each plaintiff's period of service, her occupation was that of "laborer, locomotive cleaner", but it alleges

that each plaintiff was employed by, and entered into the service of, this defendant as an "extra laborer", and that prior to and at the time plaintiffs Minor, Brown, Huntley, and Oglesby were furloughed from defendant's service, and plaintiff Crawford resigned from such service, each was respectively employed as an "extra laborer". This defendant admits that Rule 2 of said agreement of January 16, 1943, is correctly quoted, but denies that this defendant was obligated to afford plaintiffs regular and continuous employment of not less than eight hours per day, six days per week, fifty-two weeks per year. This defendant admits that, with the exception of Ruth Oglesby, plaintiffs, while employed as extra laborers, did not always work six days per week and fifty-two weeks per year, but it alleges that any day they worked they worked eight hours. This defendant admits that it was its duty to abide by said January 16, 1943 agreement, and that it could only discharge plaintiffs for cause or in accordance with the seniority provisions of said agreement, but this defendant alleges that plaintiffs have not been discharged but they, except Bessie Crawford who has resigned and Ruth Oglesby who has been called back into service, are on furlough in accordance with the seniority provisions of said agreement. This defendant denies each and all the remaining allegations of paragraph 7 of plaintiff's complaint, which it has not herein expressly admitted.

182 8. This defendant admits that, pursuant to the Railway Labor Act, the defendant union as the representative of the craft to which plaintiffs belong (other than plaintiff Bessie Crawford, who has resigned from the defendant's service) entered into and executed with this defendant the above mentioned January 16, 1943 agreement. This defendant denies that this defendant's conduct was in disregard of any rights of plaintiffs or that it entered into with defendant union, or anyone else, a collusive combina-

tion, unlawful agreement and conspiracy, at any time or place, for any purpose, and it alleges the fact to be that the said January 16, 1943 agreement is the sole and exclusive agreement existing since that date in respect of rules governing hours of service and working conditions of the class of employees to which plaintiffs (other than plaintiff Bessie Crawford) belong. This defendant denies that plaintiffs were released and discharged from the service of this defendant at any time, but it alleges the fact to be that plaintiff Bessie Crawford resigned from said service on or about April 24, 1947, plaintiffs Maddie Minor and Ruth Oglesby were furloughed from said service on September 15, 1947, and plaintiffs Lucile Brown and S. M. Huntley were furloughed from said service on September 8, 1947; that said furloughs resulted from a reduction in the force of the class of employees of which plaintiffs were members; that, as above mentioned, plaintiff Ruth Oglesby has been restored to the service of this defendant. This defendant admits that at the time of said furloughs, men junior in service to plaintiffs Minor, Oglesby, Brown and Huntley were retained in service for the reason that said plaintiffs were incapable of doing the work, all of which was in accordance with Rule 22 of the above mentioned January 16, 1943 agreement. This defendant denies that any act or omission on its part was in derogation or deprivation of any

183 rights of plaintiffs. This defendant is without knowledge or information sufficient to form a belief as to what rumors, if any, circulated among employees of this defendant. The allegations in paragraph 8 of the complaint which allege the existence of certain statutory duties and obligations on the part of the defendant union constitute conclusions of law and therefore require no answer, but if any of said allegations be construed to be allegations of fact, this defendant alleges that it is without knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph 8 of the complaint that defendant union failed or refused to comply with any obligations it owed to plaintiffs. This defendant denies all allegations of paragraph 8 of the complaint which it has not herein expressly admitted.

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Answering Count 1.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 1 of the complaint.

2. This defendant admits that plaintiff Maddie Minor was hired by and entered the service of this defendant on or about July 3, 1944, but it denies that she was hired or entered said service as a locomotive cleaner. It alleges that, because of a reduction in force, said plaintiff was furloughed by this defendant on or about September 15, 1947. This defendant denies all allegations in paragraph 2 of Count 1 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff Maddie Minor is entitled to the amount claimed or any part thereof.

Answering Count 2.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 2 of the complaint.

2. This defendant admits that plaintiff Maddie Minor was hired by and entered into the service of this defendant on or about July 3, 1944, but it denies that she was hired, or entered said service as a locomotive cleaner. It admits that on or about December 15, 1945, said plaintiff was given regularly assigned work as a laborer locomotive cleaner and it alleges that on or about July 16, 1946, said plaintiff was designated as an extra laborer which was her

occupation at the time she was furloughed, because of reduction in force, on September 15, 1947. This defendant denies all allegations in paragraph 2 of Count 1 of the complaint not herein expressly admitted.

185 3. This defendant denies that plaintiff Maddie Minor is entitled to the amount claimed or any part thereof.

Answering Count 3.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 3 of the complaint.

2. This defendant denies each and every allegation of paragraph 2 of Count 3 of the complaint.

3. This defendant denies that plaintiff Maddie Minor is entitled to the amount claimed or any part thereof.

Answering Count 4.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 4 of the complaint.

2. This defendant admits that plaintiff Lucile Brown was hired by and entered into the service of this defendant on or about July 6, 1944, but it denies that she was hired or entered said service as a locomotive cleaner. It alleges that, because of a reduction in force, said plaintiff was furloughed by this defendant on or about September 8, 1947. This defendant denies all allegations in paragraph 2 of Count 4 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff Lucile Brown is entitled to the amount claimed or any part thereof.

Answering Count 5.

1. This defendant realleges its answers, hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 5 of the complaint.

2. This defendant admits that plaintiff Lucile 186 Brown was hired by and entered into the service of this defendant on or about July 6, 1944, but it denies that she was hired or entered said service as a locomotive cleaner. It alleges that on or about December 21, 1945, said plaintiff was given regularly assigned work as a locomotive cleaner and that on or about July 16, 1946, she was designated as an extra laborer, which was her occupation at the time she was furloughed because of reduction in force on September 8, 1947. This defendant denies all allegations in paragraph 2 of Count 5 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff Lucile Brown is entitled to the amount claimed or any part thereof.

Answering Count 6.

1. This defendant realleges its answers, hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 6 of the complaint.

2. This defendant denies each and every allegation set forth in paragraph 2 of Count 6 of the complaint.

3. This defendant denies that plaintiff Lucile Brown is entitled to the amount claimed or any part thereof.

Answering Count 7.

1. This defendant realleges its answers, hereinabove set forth, to the numbered paragraphs of the complaint

incorporated by reference into paragraph 1 of Count 7 of the complaint.

2. This defendant admits that plaintiff Bessie Crawford was hired by and entered the service of this defendant on or about June 22, 1944, but it denies that she was hired, or entered said service as a locomotive cleaner. It alleges that said plaintiff voluntarily resigned from this defendant's service on or about April 24, 1947. This defendant denies all allegations in paragraph 2 of Count 7
187 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff Bessie Crawford is entitled to the amount claimed or any part thereof.

Answering Count 8.

1. This defendant realleges its answers, hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 8 of the complaint.

2. This defendant admits that plaintiff Bessie Crawford was hired by and entered into the service of this defendant on or about June 22, 1944, but it denies that she was hired, or entered said service as a locomotive cleaner. It admits that on or about December 15, 1945, said plaintiff was given regularly assigned work as a locomotive cleaner and it alleges that on or about November 15, 1946, said plaintiff was designated as an extra laborer which was her occupation on April 24, 1947, when she voluntarily resigned from this defendant's service. This defendant denies all allegations in paragraph 2 of Count 8 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff Bessie Crawford is entitled to the amount claimed or any part thereof.

Answering Count 9.

1. This defendant realleges its answers, hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 9 of the complaint.

2. This defendant denies each and every allegation of paragraph 2 of Count 9 of the complaint.

3. This defendant denies that plaintiff Bessie Crawford is entitled to the amount claimed or any part thereof.

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Answering Count 10.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 10 of the complaint.

2. This defendant admits that plaintiff S. M. Huntley was hired by and entered the service of this defendant on or about April 26, 1945, but it denies that she was hired or entered said service as a locomotive cleaner. It alleges that, because of a reduction in force, said plaintiff was furloughed by this defendant on or about September 8, 1947. This defendant denies all allegations in paragraph 2 of Count 10 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff S. M. Huntley is entitled to the amount claimed or any part thereof.

Answering Count 11.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 11 of the complaint.

2. This defendant admits that plaintiff S. M. Huntley was hired by and entered into the service of this defendant on or about April 26, 1945, but it denies that she was hired or entered said service as a locomotive cleaner. It admits that on or about December 15, 1945, said plaintiff was given regularly assigned work as a locomotive cleaner, and it alleges that on or about April 5, 1946, said plaintiff was designated as an extra laborer which was her occupation at the time she was furloughed, because of reduction in force, on September 8, 1947. This defendant denies all allegations in paragraph 2 of Count 11 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff S. M. Huntley is entitled to the amount claimed or any part thereof.

Answering Count 12.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 12 of the complaint.

2. This defendant denies each and every allegation of paragraph 2 of Count 12 of the complaint.

3. This defendant denies that plaintiff S. M. Huntley is entitled to the amount claimed or any part thereof.

Answering Count 13.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 13 of the complaint.

2. This defendant admits that plaintiff Ruth Oglesby was hired by and entered into the service of this defendant on or about September 16, 1943, but it denies that she was hired or entered said service as a locomotive cleaner.

It alleges that, because of a reduction in force, said plaintiff was furloughed by this defendant on or about September 15, 1947, but that on December 18, 1947, she returned to work by filling a vacant job which she was capable of handling and to which her seniority entitled her. This defendant denies all allegations in paragraph 2 of Count 13 of the complaint not herein expressly admitted.

3. This defendant denies that plaintiff Ruth Oglesby is entitled to the amount claimed or any part thereof.

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Answering Count 14.

1. This defendant realleges its answers, as hereinabove set forth, to the numbered paragraphs of the complaint incorporated by reference into paragraph 1 of Count 14 of the complaint.

2. This defendant denies each and every allegation of paragraph 2 of Count 14 of the complaint.

3. This defendant denies that plaintiff Ruth Oglesby is entitled to the amount claimed or any part thereof.

Third Defense.

As a separate and affirmative defense to the complaint, this defendant alleges that Rule 29 of the January 16, 1943 agreement (Exhibit A, attached to the complaint) provides in part:

Should any employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic and superintendent, each in their respective order by the employe, the duly authorized local committee or his General Chairman, within ten (10) days. * * *

This defendant alleges that the plaintiffs and each of them failed to present or take to their foreman, general foreman, the master mechanic or superintendent, or any other

official of this defendant, within the ten days provided for by Rule 29, their claim, as alleged in the complaint that they had been unjustly dealt with and that certain provisions of the January 16, 1943 agreement had been violated by the defendants, and that the failure of the plaintiffs to present or take up such claims as provided in said agreement constitutes a bar to the assertion of such claims in this action.

Wherefore, this defendant, having fully answered, prays that the complaint be dismissed as to it and for its costs herein.

191

HAMILTON & HAMILTON,
By Wm. B. JONES,
Attys. for Defendant,
Washington Terminal Co.

**192 Motion for Summary Judgment by Defendant
Washington Terminal Company**

led NOV 20 1948

Defendant Washington Terminal Company moves the Court that it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in defendant Washington Terminal Company's favor dismissing the action on the grounds that there is no genuine issue as to any material fact, and that the defendant is entitled to a judgment as a matter of law, particularly with respect to the following:

1. Plaintiffs have failed to comply with the condition precedent in their respective employment contracts in that they did not present their grievances to this defendant in the manner and within the time provided in the said contracts;

2. The plaintiffs are without any proof that any conspiracy existed between the defendant Washington Terminal Company and the defendant International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers of the Railway Employees' Department, A. F. of L. for the purpose of replacing the plaintiffs, or other women employees, with men employees.

HAMILTON and HAMILTON,
By WM. B. JONES,
Attorneys for Defendant,
Washington Terminal Company.

**192A Memorandum in Opposition to Defendant
Washington Terminal Company's Motion
for Summary Judgment**

Filed NOV 26 1948

In opposition to defendant Washington Terminal Company's Motion for summary judgment in its favor, plaintiffs respectfully show:

Answer to Defendant's # 1.

1. That their complaint consists of concise statement of their grievances in accordance with Rule 8 of the Federal Rules of Civil Procedure, and that the Rules of Civil Procedure do not require plaintiffs to anticipate in their complaint any defense that defendant could interpose. In this cause the defendant Washington Terminal Company has interposed as the Third Defense in its Answer and Point No. 1 in its Motion for Summary Judgment that plaintiffs failed to comply with conditions precedent in their respective contracts of employment and that on this ground defendant is entitled to judgment as a matter of

law inasmuch as there is no genuine issue as to any material fact.

2. Rule 7 of the Federal Rules of Civil Procedure permits no reply to an Answer, save in the instances of counter-claims, cross claims and third party practice, but states that the Court may order a reply to an Answer. Thus, where a party is not permitted or required to file a responsive pleading, it is obvious that the defenses raised by way of answer must be deemed controverted and in issue, and further that plaintiffs must have the right to introduce evidence in support of any matter which might have been set up in such responsive pleading had the same been permitted or required. See,

Central Trust Co. v. Second Nat. Bank, U. S. Dist. Ct., W. D. Pa., 1939, 1 F. R. D. 98.

192B Plaintiffs, had the F. R. C. P. permitted, would have alleged in reply facts supporting estoppel and excuse for non-performance of condition precedent upon which defendant relies in its motion and thereby would have raised a genuine issue of material fact and when so raised a motion for summary judgment will not lie. See,

Clair v. Sears Roebuck & Co., W. D. Mo. 1940, 34 F. Supp. 559.

And in further support of plaintiffs' contention that there exist genuine issues of material fact plaintiff herein incorporate by reference testimony of plaintiffs in defendant's deposition filed herein, and plaintiffs' affidavits attached hereto.

3. Rule 39 of the Agreement between the defendant Washington Terminal Company and the defendant International Brotherhood of Firemen, and Oilers, Helpers, Roundhouse and Shop Laborers, of January 16, 1943, provides,

“The railway company will have printed, in book form, copies of the agreement and furnish a copy to each employe affected.”

In their depositions and affidavits plaintiffs presented evidence that the defendant company never fulfilled its duty in furnishing said copy of the contract in spite of its promise so to do. And in this respect it is well settled and established law that a party to a contract cannot escape liability under his obligation on the ground that the other party has failed to perform a condition precedent to the establishment of such liability or to the maintenance of an action upon the contract where he himself has hindered performance or that he has actually prevented it. See,

Williston & Thompson on Contracts, Vol. 2, Sec. 677, Ruling Case Law—Contracts, Section 374. *Arlotte v. National Liberty Ins. Co.*, 312 Pa. 442, 167 A. 295.

Amies v. Wesnofske, 255 N. Y. 156, 174 N. E. 436. *Moore County Carbon Co. v. Whitten* Civ. Appeals, Texas, 1940, 140 S. W. 2nd 880.

Further in this connection the *Restatement of Contracts*, Vol. 1, Section 295, states:

192C “EXCUSE OF CONDITION BY PREVENTION OR HINDRANCE”

If a promisor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened non-performance of the return promise does not discharge the promisor's duty, unless

- (a) the prevention or hindrance by the promisor is caused or justified by conduct or pecuniary circumstances of the other party; or
- (b) the terms of the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party.

4. The record shows that the defendant concealed the existence of said agreement between the Terminal Company and the Union from the plaintiffs, and since the agreement was consummated long before any of the plaintiffs went into the service of the Terminal Company, plaintiffs cannot be charged with knowledge of said agreement, actual or constructive. (See depositions and affidavits.) And it is settled law that where a person who, by concealing facts, induces another to act in a particular manner will be estopped to set up such facts to the other's prejudice. See,

Flynn v. Roberts, 206 Ky. 655, 268 S. W. 351.

Tatum v. Caldwell, Civ. App. Texas, 40 S. W. 2nd 894.

5. In support of its Motion for Summary Judgment defendant Washington Terminal Company cites the cases of:

Harrison vs. Pullman Co., 68 Fed. 2nd 826.

Cousins vs. Pullman Co., 72 S. W. 2nd 356.

Norfolk and Western Co. vs. Harris, 84 S. W. 2nd 69.

Reed vs. St. Louis Co., 95 S. W. 2nd 887.

Swilley vs. Galviston Co., 96 S. W. 2nd 105.

It is submitted that none of these cases fall within the facts of this cause for there plaintiffs made no claim of concealment of contract, or lack of knowledge of the existence of a contract, as has been done in the within cause, nor in those cases did there appear the issue of failure to perform a contract duty as is shown in the facts of this case.

CHARLES S. BROWN,
HUVER I. BROWN,
Attys. for Plaintiffs.

**193 Plaintiffs' Affidavit in Opposition to Defendant
Washington Terminal Company's Motion
for Summary Judgment**

District of Columbia, ss.:

Filed *1* *Nov* *26* *1948*

We, Maddie Minor, Lucile Brown, Bessie Crawford, S. M. Huntley and Ruth Oglesby, being first duly sworn, individually depose and say, that I am a plaintiff in the within cause; that I am competent to testify in this cause; that I have personal knowledge of the facts herein set forth; that at no time prior to, during, or after my employment with said company have I been furnished with a copy of the agreement between the Washington Terminal Company and the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers of the Railway Employees' Department, A. F. of L., dated effective, January 16th, 1943, nor has the existence of such agreement ever been called to my attention by the said company though I understand and state upon information and belief that Rule 40 of said agreement provides,

"The railway company will have printed, in book form, copies of the agreement and furnish a copy to each employe affected."

that the procedure set forth in Rule 29 of said agreement has never been called to my attention, orally or written, by the Washington Terminal Company.

/s/ LUCILE BROWN,

/s/ S. M. HUNTLEY,

/s/ MADDIE MINOR,

/s/ RUTH OGLESBY.

Subscribed and sworn to before me this 24th November, 1948.

/s/ ORLANDO THOMPSON.

194

Order for Summary Judgment*Filed*

DEC 9 1948

This cause having come on for hearing upon the motions for summary judgment filed by the defendants Washington Terminal Company and the Brotherhood of Firemen and Oilers, Helpers and Roundhouse and Railway Shop Laborers, and the Court having considered the pleadings, the depositions of the plaintiffs on file herein, the affidavits of plaintiffs Maddie Minor, Lucile Brown, S. M. Huntley and Ruth Oglesby, and the admission by counsel for plaintiffs, made in open court, that there are no facts to support the allegations in the complaint of collusion by the defendants and that plaintiffs concede that the motion for summary judgment filed by the defendant Brotherhood of Firemen and Oilers, etc., is well taken; and having heard oral argument; and having found and concluded that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law; it is hereby

ORDERED, ADJUDGED AND DECREED that the motions for summary judgment by each of the defendants be, and they are, hereby granted and the action is dismissed with prejudice, defendants to have and recover from plaintiffs their costs in the action.

This 9th day of December, 1948.

/s/ ALEXANDER HOLTZOFF,
Judge.

196

Notice of Appeal

MADDIE MINOR, <i>et al.</i>, <i>Plaintiff,</i> vs. WASHINGTON TERMINAL COMPANY, <i>et al.</i>, <i>Defendant.</i>	}
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Civil No. 4678-47.
 Filed Dec. 13, 1948.

Notice is hereby given this 13th day of December, 1948, that Maddie Minor, Lucile Brown, Bessie Crawford, S. M. Huntley and Ruth Oglesby hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 9th day of December, 1948, in favor of Washington Terminal Company against said Maddie Minor, Lucile Brown, Bessie Crawford, S. M. Huntley and Ruth Oglesby.

HUVER I. BROWN,
 CHARLES S. BROWN,
*Attorneys for Plaintiffs, Maddie Minor,
 Lucile Brown, Bessie Crawford, S. M.
 Huntley and Ruth Oglesby.*

Excerpts from Depositions

Filed

NOV 22 1948

1 Depositions of Maddie Minor, Lucile Brown, Bessie Crawford, Shannie M. Huntley, and Ruth Oglesby, taken on behalf of the defendants.

* * *

2 **Appearances:**

On behalf of the plaintiffs; C. S. Brown.

On behalf of the defendant, Washington Terminal Co., Hamilton and Hamilton, by William B. Jones.

* * *

Madie Minor, a witness of lawful age, was duly sworn, and being examined by counsel, testified as follows:

DIRECT EXAMINATION by Mr. Jones:

Q. Your name is Madie Minor?

* * *

Q. Mrs. Minor, you were employed by Washington Terminal Company on July 3, 1944? A. That is right.

* * *

11 Q. Was that the day you were notified your services were no longer needed? A. Mr. Boucher didn't notify us. He told Joe Curtis to tell us that we were going to get laid off.

Q. Who is Mr. Boucher? A. He is the head man.

* * *

13 Q. Joe Curtis was your foreman? A. That is right.

* * *

14 Q. Now, when you were employed, did you sign any papers, or a payroll? A. That I don't know.

Q. Were you given any papers when you were employed, or at any time while you were working?

15 A. That I don't recall.

* * *

18 Q. When you were told you were not needed any more, what did you do? A. I went down and got my money.

* * *

Q. Did you say anything to anybody about not working any more? A. I didn't bother them. I came on across the tracks, and went around up there, into the coach yard, and got something and then went back into Union Station.

* * *

20 Q. You took your money and you left? Is that right? A. There was nothing else to do but leave, was there?

Q. You said nothing to anybody about it? A. No.

* * *

24 CROSS EXAMINATION by Mr. Brown:

* * *

25 Q. When you were employed, didn't the Terminal Company give you certain papers, such as safety regulations, and a few pamphlets and so forth? A. They gave me, I think, three little books.

Q. Do you know what those books were? A. They said to read them. They gave instructions on crossing the tracks, and things like that. I think that is what they said they were.

Q. Did you ever examine those books? A. I looked at them a couple of times.

Q. Do you know whether one of the books contained information indicating an agreement between the Terminal Company and the Union? A. No, I don't.

Q. You don't know whether one of those books contained that information? A. No.

* * *

27 Q. Did you ever talk with anyone in the Union Station Office about being laid off? A. No, not that I know of.

* * *

28 Q. When you were laid off, did you have to turn in anything? A. We turned in three little books.

* * *

RE-DIRECT EXAMINATION by Mr. Jones:

Q. Can you read, Mrs. Minor? A. Sure.

* * *

33 **Lucille Brown**, a witness of lawful age, was duly sworn, and being examined by counsel, testified as follows:

DIRECT EXAMINATION by Mr. Jones:

Q. Your name is Lucille Brown? A. That is right.

* * *

Q. Mrs. Brown, you went to work for the Washington Terminal Company around July 6th, 1944, wasn't it? A. That is right.

* * *

45 Q. Now, when you first went to work there, were you given some little books? A. Yes, I was given two, a black one and a gray one.

Q. Do you remember what those books were about? A. I can't think, but they weren't like a book I saw later after I was laid off.

Q. What was the book you saw after you were laid off? A. That book had regulations and rules in it that I had never seen before.

Q. You don't remember seeing it? A. No, I just saw the book after I was laid off.

Q. Were you given anything else in writing when you went to work? A. I was given a little identification card, that is all.

Q. While you were there, were you given any other written documents of any kind? A. No. I was given a card, you know, telling how much I made, and things like that.

* * *

46 Q. Did you say that you were told by Joe Curtis on a Saturday that you were being laid off? A. On Saturday, that is right.

* * *

Q. Then you came back to work on Monday, and you found out there was no work for you, is that right? A. That is right.

Q. Then what did you do? A. You went to get
47 your laundry some place? A. Yes. Right in the machine shop.

Q. You ran into Mr. Boucher there? A. I ran into Mr. Boucher, and I asked him.

Q. What did he say again? A. Mr. Boucher said that we had been notified four days, but we hadn't because we were notified on Saturday. Sunday was the day we were supposed to be off. Well, Monday wouldn't have been the fourth day.

* * *

Q. Did you talk to anybody after you talked to Boucher about being laid off? A. I talked to the girls who were laid off with me, but to nobody else.

* * *

48 Q. Now, when your status was changed from regular to extra, did you say anything to anybody about that? A. I mentioned to Mr. Clarence Williams. He was supposed to be the president. He wasn't the president, but the president died, and he was, you know, acting as the president until they got one.

Q. The president of what? A. The union.

* * *

49 Q. He was the only other man you spoke to about this extra and regular status? A. Yes.

Q. You didn't speak to Curtis about that? A. No, there was no need to, because he was always talking, you know. He was saying that Mr. Boucher doesn't want us, and that there was no need of going in there and saying to him. He would always say something like that. Every time we would go over to him about a complaint about any-

thing he would always say, "There isn't any need of going into the office because Mr. Boucher doesn't want any women anyhow. You are just making it hard for yourselves." So we never did go to him.

* * *

55 CROSS EXAMINATION by Mr. Brown:

* * *

56 Q. Did any of the company people tell you how to register complaints? A. No.

Q. Did you ever get a copy of the rules and regulations negotiated between the company and the union? A. No.

* * *

61 Bessie Crawford, a witness of lawful age, was duly sworn, and being examined by counsel, testified as follows:

DIRECT EXAMINATION by Mr. Jones:

Q. Your name is Bessie Crawford? A. That is right.

* * *

62 Q. Miss Crawford, you were employed by the Washington Terminal Company on about June 22, 1944? A. What did you say?

Q. You were first employed by the Washington Terminal Company on June 22, 1944? A. June 24, 1944.

Q. The 24th of June, 1944? A. That is right.

* * *

66 Q. Now, you resigned from the employment of the Terminal Company on April 24, 1947, didn't you?
A. That is right.

* * *

69 Q. When you were employed, were you given any-
70 thing in writing about your job? A. Yes.

Q. Were you given some little books at the same time? A. Yes.

Q. Do you remember what those books were? A. They were rule books.

Q. The rules of the company? A. The Washington Terminal Company.

Q. Did they deal with how people were employed and with seniority and such matters? A. Yes.

Q. You saw that? A. Yes.

Q. You read the book? A. Yes.

Q. That book had rules in it that were entered into between the Washington Terminal Company and the union, and had all the seniority provisions? A. It was supposed to be the union book, but I saw a union book that wasn't the same as the one I had, and which was supposed to have the rules in it.

Q. But you did get a book that had the rules in it? A. Yes, I did get a book, but it wasn't like the book that was supposed to have the correct rules in it. The book that I had was a fake, and was a lot different from the book we were supposed to have.

71 Q. How do you know what book you were supposed to have? A. I saw it.

Q. Where did you see it? A. Mr. Brown.

Q. Do you mean your attorney, Mr. Brown? A. Yes.

Q. How do you know the book he had was the correct book? A. A man who was supposed to be a union man wanted to know why we weren't getting time and a half. He asked us, "Do you get time and a half?" I said, "No." He said, "You are supposed to read the book."

I said, "I did, but I didn't see that." He said, "Did you see a book like this," and he showed me a book but it wasn't like the one I had.

Q. Who was that union man? A. I don't know his name.

Q. When did he show this to you? A. About the latter part of September or the first of October.

Q. Of what year? A. 1947.

Q. After you had resigned? A. That is right.

Q. Now, did you get anything in writing after you were on the job, any books or papers or letters, or anything like that? A. No.

* * *

Q. Now, when you resigned, who did you talk to? A. Mr. Boucher.

Q. How did you resign. Do you remember? A. He said, "You go do your cleaning, and work with water without gloves, or else."

73 So I said, "I will 'else.' Get me my money."

He said, "You go get those books. You won't get your money until you bring the books back."

So I went home and brought the books back and he gave me the money.

Q. He didn't give you the money, did he? A. I went over to the coach yard and got my time card and then went to the Union Station.

Q. And you got your money there? A. That is right. The time card from the day before was over there. It hadn't gone over to the Union Station, and I had to go over there and pick it up.

* * *

74 Q. Now, when you left Mr. Boucher and went on over to the coach yard, did you say anything over there as to why you were quitting? A. No, I didn't have anyone I wanted to talk to. All I wanted was the card.

* * *

Q. Did you get that card from any person over there?

A. Yes, there was a man who gave it to me.

Q. Did you say anything to him as to why you were quitting? A. No.

Q. When you went up to the Union Station, did you say anything to anybody? A. No, I didn't.

Q. Did you ever say anything to anybody around the Terminal as to why you were quitting? A. No.

Q. When you were changed from laborer locomotive cleaner to extra laborer, did you talk to anybody about that?

A. Yes.

Q. Who did you talk to then? A. Mr. Clarence
75 Williams, the union man. When I was made extra,
you said?

Q. Yes. A. Yes, I talked to Mr. Clarence Williams.

Q. What did you talk to him about? A. I told him we were not supposed to be made extra. They hadn't laid off anyone, and they were hiring boys every day, and our seniority was supposed to be over the boys. They were younger than we were, and they were still regular.

Q. What did Mr. Williams say or do? A. Well, Mr. Williams said, "I can't do anything about it right now, but I will see you later."

I said, "Who can I see?"

He said, "There isn't anybody else to see."

I said, "Isn't there any other man I can see," and he said, "No."

Q. Did you talk to Mr. Curtis about it? A. Well, Mr. Curtis would never talk with us.

Q. You didn't talk to him about it at all? A. I asked him why they were making me extra when there were several younger than I was, and they were still regular, and he said, "Don't ask me."

Q. You didn't talk to Mr. Boucher about it? A. No, sir.

Q. Then it was only Mr. Curtis and Mr. Williams
76 that you talked to about it? A. Yes.

* * *

78 Q. Your foreman was Mr. Curtis? A. That is right.

* * *

80 Q. What did all of that have to do with the women being discharged and men taking their places? A. What did that have to do with what?

Q. What did their having to ask to go to the bathroom have to do with the women being discharged and men taking their places? A. Mr. Curtis told us that if we were caught out of the roundhouse and hadn't asked to leave, we would be fired. Well, I told him I wasn't going to ask, and that is when he carried me into Mr. Boucher's office.

* * *

Q. Now, you told Mr. Curtis that it wasn't in the rule book? A. Yes.

Q. That you had to ask to leave was not in the rule book? A. Yes.

* * *

Q. So you were acquainted with the rule book? A. With the book that he gave me.

81 Q. What was in that rule book? A. It told about the tracks, how far you were supposed to be from the track when an engine was going out of the roundhouse, or coming back in, and how you were supposed to get out of a Diesel engine if it was running, and different things like that.

Q. What was in the other book? A. All of them were about the same. Just about alike.

Q. The two books told you how to get on and off engines? A. Yes. They had about the same thing in them. I read

them, but I don't remember just now what was in them. But I do remember that they both read about the same.

Q. There wasn't anything in the books about going to the bathroom? A. It wasn't in there.

Q. Why did you attempt to cite that book to Mr. Curtis?
A. That was supposed to be the rule book of the Washington Terminal Company.

Q. Was it supposed to be the rule book about your seniority? A. Yes, that was supposed to be the rule book about my seniority.

Q. Did you see anything in there about seniority? A. No.

82 Q. You never saw anything in it about seniority?
A. I don't remember.

Q. I think a little earlier you were telling us about your seniority. From whom did you learn about your seniority rights? A. Mr. Curtis and the union told us about them.

Q. They told you about your seniority rights and your rights with the company? A. Yes. Then, when it was different, I asked him about it, and he told me that I talked too much.

* * *

85 CROSS EXAMINATION by Mr. Brown:

Q. Going back, Miss Crawford, do the books that were given you by the company when you were employed, do you know whether one of the books or two of the books were safety regulations? A. Yes, I think so.

Q. That is, both of them were safety regulations? A. I don't just remember. I know one of them told about where you were supposed to stand when an engine was coming, and what you were supposed to do about electricity and different things like that.

Q. Did you read both of the books? A. I read all three

of them when I first got them, but I don't remember what there was in them.

Q. Do you remember whether any of the books had any references to seniority? A. I don't remember.

Q. Do you know whether any of the books had any reference to hours of work? A. Yes, I remember seeing something about eight hours, and about all over eight hours you were supposed to get time and a half. I remember seeing that.

Q. Did any of the books have any information
86 about rates of pay? A. No, I don't remember.

Q. Did any of the books have any information about what to do when you had a grievance, and about when you had a complaint to make, who to see and where to go? A. I don't remember.

* * *

88 Q. Did you ever see a book entitled "Rules and Working Conditions between the Washington Terminal Company and the International Brotherhood of Firemen, Oilers," and so forth? Did you ever see a book of that description? A. No.

Q. You never saw one? A. No.

Q. Did anyone ever explain to you by word of mouth or otherwise how you were to go about making complaints? A. Joe Curtis told me that about things I didn't understand I was to come and ask him.

Q. Did you ever do that? A. Yes.

Q. Did he tell you about anything else? A. What do you mean?

Q. When you made complaints, and you weren't satisfied, did he tell you about anybody else you could go to? A. No. When I didn't get any satisfaction from him, I would say I wanted to go to see Mr. Boucher. He would then tell me, "What I say goes." He told me he was the foreman over me.

* * *

91 RE-DIRECT EXAMINATION by Mr. Jones:

Q. Miss Crawford, you used an expression to indicate you were carried into Mr. Boucher's office. You don't mean physically carried in, do you? A. That is what we usually say. Mr. Curtis told me to go in the office, and I went.

Q. You walked in to talk about this matter? A. Yes.

* * *

92 Q. But you knew that you could go above Curtis to Boucher, who was Curtis's boss? A. That is who he told me I would have to go to see. I asked him, and he said, "Go see Mr. Boucher" and I said, "I will go."

* * *

105 **Shannie M. Huntley**, a witness of lawful age, was duly sworn, and being examined by counsel, testified as follows:

DIRECT EXAMINATION by Mr. Jones:

Q. You are a Mrs. Huntley, are you not? A. Yes, Mrs. Huntley.

Q. Mrs. Huntley, you went to work for the Washington Terminal Company about April 26th, 1945, didn't you? A. Yes. I think I signed on the 25th.

* * *

112 Q. When you went to work for the Terminal Company at the very beginning, you were given some little books, weren't you? A. Yes.

Q. Do you remember those books? A. Yes.

113 Q. What were they about? A. They told you about how to be careful, and everything, you know, how to be careful about the work out there, and everything, something about the work. I didn't get but two.

* * *

Q. One told you to be careful. What was in the other book? A. The best I can remember is that it was something about the third rail, and "Don't step on the third rail." That is the best I can remember about the books.

Q. Well, that is one book, the safety book? A. That is the safety book.

Q. All right. What was in the other book? A. To tell you the truth, I don't remember now.

Q. You can read, can't you? A. Yes, I can read some.

Q. Could you read the books? A. Yes, I read the books, the books they gave me.

Q. But you just don't remember what was in the other book, is that right? A. Yes, that is right.

Q. Do you remember anything in the other book
114 being about seniority, about your seniority? A. I didn't see anything in there about it.

Q. Do you remember seeing anything in it about hours of work and the number of hours a day you were supposed to work, in the other book? A. I am going to tell you the truth. I really don't remember about that book.

Q. It could be in there, but you don't remember? A. That is right. I don't remember. It wouldn't make sense for me to say I knew when I don't remember.

Q. Now, after you went to work, and after you got these two books, did you receive any other written things at all? A. No, I never received anything else.

* * *

115 Q. Now, Curtis told you that you were going to be laid off; is that right? I think that is what you told us? A. Joe Curtis told me that.

Q. What did you do when he told you that? A. What did we do about that?

Q. Yes. A. I didn't do anything about it, because at the time he told me I was being laid off, there was nothing I could do but go and put my clothes back on.

Q. You got your time card and your money also, is that right? A. We had to go over to the Union Station to get our money.

* * *

Q. Did you talk to anybody about the fact you were being laid off? A. No, I didn't.

Q. You didn't talk to anyone at all? A. No.

* * *

120 Q. Did you ever talk to Curtis or Boucher or anybody about being changed from a regular to an extra in the end there? A. I did tell him, when some men came out that were put on regular before I was, that I was older than they were.

121 Q. Whom did you talk to? A. Joe Curtis.

Q. What did he say? A. He told me to mind my business.

Q. You didn't talk to anybody else about it? A. No, I didn't talk to anybody else.

* * *

124 CROSS EXAMINATION by Mr. Brown:

* * *

128 Q. Did anybody ever instruct you as to the procedure you were to follow when you had complaints? A. No.

Q. Did anybody ever give you a pamphlet containing that information? A. No.

Q. Or a booklet? A. No.

* * *

RE-DIRECT EXAMINATION by Mr. Jones:

* * *

129 Q. Now, you don't remember what was in that second book you received? One book contained safe-

ty regulations, but as to the second book you don't
130 remember what was in it? A. No, I don't.

* * *

135 **Ruth Oglesby**, a witness of lawful age, was duly sworn, and being examined by counsel, testified as follows:

DIRECT EXAMINATION by Mr. Jones:

Q. Your name is Ruth Oglesby? A. That is right.

* * *

Q. Mrs. Oglesby, you were first hired by the Washington Terminal Company on September 16th, 1943; is that correct? A. Yes, that is.

* * *

137 Q. Well, didn't you go on extra for one week before you were let out, in September? On September 15th? A. No, I wouldn't call that extra, because I was having my faction, and I was told that Saturday morning I was being laid off.

Q. So, as far as your actual work was concerned, you were only working regular? A. That is right.

Q. Now, you are back at work for the Washington Terminal Company, aren't you? A. Yes.

Q. You went back to work in December of last year? A. Yes, in December of last year.

Q. You were off for three months, I think? A. Yes, something like that.

* * *

139 Q. Did you talk to anybody about being laid off?

A. No, I didn't, except that I did talk to the Secretary—I guess he is called—as to why I was being laid off, since I was regular and had never been made extra.

Q. Was that Mr. Boucher's secretary? A. Yes, that is right.

Q. What did he say to you? A. He said that they had to lay me off, that I was in the lay-off group, and they had to lay me off, that is all he said.

Q. Why did he say he had to lay you off? A. He said I was in the lay-off group, that they were reducing the force, and that I had to be laid off. That is all he said.

Q. You didn't then talk to Joe Curtis about it?? A. No.

140 Q. Or Mr. Boucher? A. No. Joe Curtis wouldn't talk to me about it. He said he didn't have anything to do with it.

Q. You didn't talk to Mr. Boucher? A. No.

Q. Or anybody else, then? A. No. I did try to talk to Mr. Tolson.

Q. How did you go about trying to talk to Mr. Tolson? A. I went up to his office. I was told that Mr. Tolson wasn't in his office, and they didn't know what time he would be there. I asked them could I see him, and they said "No, you have to get an appointment."

Q. When was it that you tried to see Mr. Tolson? A. I guess it was about two weeks afterwards, or something like that.

Q. About two weeks after you had been notified you were to be laid off? A. Yes.

Q. And you were told to get an appointment. Did you try to get an appointment? A. No, I didn't.

Q. You just dropped it there? A. Yes, I did.

Q. You didn't try to see anybody else, then? A. No, I didn't try to see anybody else.

* * *

144 Q. When you were first employed by the Terminal Company, were you given some little books? A. Yes.

Q. Do you remember what those books were? A. I don't remember exactly. I know one was a book telling all about how to ride the Diesels and how to work on them. What was in the other book, I don't exactly know.

Q. Now, when you came back to work last December, did you get some books again? A. Yes, I got the same books.

145 Q. You still have those books, do you? A. Yes.

Q. Do you remember what is in those books now? A. No. To tell you the truth I don't really know exactly what they are.

Q. Have you ever read them? A. I have read them.

Q. Did they tell you anything about your seniority? A. No, I don't think any of those books have anything in them about seniority.

* * *

147 Q. Now, you didn't receive any books or anything after you were working there, but while you were working there the only things you received in writing were what you received when you started to work; is that right? A. That is right.

* * *

Q. And the only person you talked to when you got notice you were not going to be retained, but were going to be relieved, was the secretary to Mr. Boucher? A. That is right.

* * *

150 CROSS EXAMINATION by Mr. Brown:

* * *

151 Q. Have you had an opportunity to read the booklets that the Company gave you since you have been back to work? A. I think I have glanced through them, but just to tell you what is in them, I could probably

tell you something about some of the things in them, but I couldn't tell you exactly.

Q. Are they the same booklets you had before you left? A. Yes, they are.

Q. Do you know whether, among those booklets, there is one between the Washington Terminal Company and the International Brotherhood of Oilers, Firemen, and so forth, stating the rules and working conditions? A. No.

152 Q. That is not among them? A. No.

Q. That was not amongst those you got at first? A. No.

* * *

154 Q. Did Mr. Curtis ever tell you the procedure to follow about grievances, where to go, and so forth? A. No.

Q. Did anyone ever tell you? A. No.

* * *

155 RE-DIRECT EXAMINATION by Mr. Jones:

* * *

156 Q. Can you read, Mrs. Oglesby? A. Yes, I can.

Q. You can read well enough to read the books that were given you? A. Yes, I can.

* * *

BRIEF FOR APPELLEE

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA ~~CIRCUIT~~

United States Court of Appeals

For the

District of Columbia Circuit

No. 10096 **FILED** MAY 13 1949

Joseph W. Stewart

MADDIE MINOR, LUCILE BROWN, BESSIE CRAWFORD, S. M. ^{CLERK}
HUNTLEY, RUTH OGLESBY, *Appellants.*

v.

THE WASHINGTON TERMINAL COMPANY, INCORPORATED,
Appellee.

**Appeal from a Part of a Summary Judgment of the United
States District Court for the District of Columbia.**

GEORGE E. HAMILTON, JR.,
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Of Counsel:

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 10,096.

MADDIE MINOR, LUCILE BROWN, BESSIE CRAWFORD, S. M.
HUNTLEY, RUTH OGLESBY, *Appellants.*

v.

THE WASHINGTON TERMINAL COMPANY, INCORPORATED,
Appellee.

Appeal from a Part of a Summary Judgment of the United
States District Court for the District of Columbia.

BRIEF FOR APPELLEE.

SUMMARY OF ARGUMENT.

Appellants are barred from bringing this action on appellee's alleged breach of their employment agreements. Those employment agreements, through the incorporation of a collective bargaining agreement, required appellants to pursue defined administrative adjustment procedures in

the settlement of their grievances. Appellants admit that they did not pursue those remedies before instituting this action. Their argument that they were hindered or prevented from pursuing the adjustment remedies because appellee failed to furnish them with copies of the collective bargaining agreement lacks merit. The collective bargaining agreement was entered into on their behalf by a lawfully designated bargaining representative and is therefore binding upon them even though they did not sign it, or see it, or know anything further about it. Moreover their complaint shows that appellants knew of the adjustment procedure provided by the collective bargaining agreement at the time their grievances arose.

ARGUMENT.

This action arose out of appellee's alleged breach of its employment agreements with the appellants. Those individual contracts of employment incorporate the terms of the collective bargaining agreement of January 16, 1943 referred to in appellants' complaint (J. App. 1-19).¹ *J. I. Case Co. v. Labor Board*, 321 U. S. 332, 335; *Steele v. L. & N. R. Co.*, 323 U. S. 192, 200-201; *Edwards v. Capital Airlines, Inc., et al.* (Nos. 9989, 9990, United States Court of Appeals for the District of Columbia Circuit, decided March 14, 1949). Rule 29 of the collective bargaining agreement provides that should any employee "believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic and superintendent, each in their respective order by the employee, the duly authorized local committee or his general chairman within ten (10) days," together with a further provision

¹ Appellee adopts appellants' form of citation of joint appendix to appellants' brief.

While appellants' complaint attached as Exhibit A the entire collective bargaining agreement, the joint appendix sets forth only two of the rules of that agreement. The complete agreement is recited in the appendix to this brief (Appellee's App. 2-13).

for right of appeal to higher officials of the appellee (J. App. 19; Appellee's App. 11). As the appellants have "admitted and conceded" (Brief, p. 8), none of them took her case of alleged breach of contract to the designated officials of the appellee in the manner and within the time provided. It is appellee's contention that, since the appellants failed to take up their cases with appellee's officials, this action is barred and the District Court correctly granted appellee's motion for summary judgment under Rule 56, Federal Rules of Civil Procedure.²

In *Harrison v. Pullman Co.* (C. C. A. 8, 1934), 68 F. 2d. 826, where the facts were similar to those in this action, it was held that until an employee first brought himself within the terms of the collective bargaining agreement he was unable to present in court as a justiciable controversy the question of his alleged wrongful discharge. There the agreement provided that should any employee "believe that he has been unjustly dealt with or any of the provisions of this agreement has been violated, he may appeal to his District official, and failing satisfactory adjustment, he may * * * refer the matter to the Local Committee" and thereafter to the zone general committee and then to the bureau of industrial relations, "with right to appeal as provided by law". The employee did appeal to the district official and thereafter spoke to a member of the local committee about his case, but beyond that he did not comply with the provisions of the agreement. The court, in sustaining the verdict directed for the employer Pullman Company, said (p. 827):

After appealing to Superintendent Burr, who was the district official of the Pullman Company, he took the matter up with the local committee to the extent of speaking to one of its members, a fellow employee. Nothing resulted from this, and appellant did nothing further thereafter. No attempt was made by him, or on his behalf, to refer the matter to the zone general

² Rule 56, Federal Rules of Civil Procedure is set out in a supplement to this brief, *infra*, pp. 13-14.

committee, under the plan of employee representation, or to the bureau of industrial relations, with the right of appeal as provided by law. This suit was filed in the state court October 5, 1931, nearly five years after the discharge complained of.

It is evident that this contract between the Pullman Company and its employees was entered into for the purpose of establishing a complete and explicit code for the adjustment of labor disputes involving, among other things, such questions of employment. Appellant in terms sues because of an alleged breach of this contract, and, to prevail, he must show that he has brought himself within its terms and has been unable to secure a satisfactory adjustment by the means therein expressly provided. . This he has failed to do, and for this reason he is unable to present his case in court as a justiciable controversy.

See also *J. E. Wyatt v. Kansas City Southern Ry. Co.*, (Tex. 1937), 101 S. W. 2d 1082; *Reed v. St. Louis S. W. R. Co.*, (Mo. App., 1936), 95 S. W. 2d 887.

An administrative grievance procedure established by contract creates a mechanism whereby either mistaken or unjust action, if any, of subordinate officials may be corrected by their superiors, thereby permitting the immediate rectification of a wrong and at the same time mitigating or avoiding large damage claims that might otherwise be created. *United States v. Holpuch Co.*, 328 U. S. 234, 239.³ That such is the purpose of Rule 29 of the collective bargaining agreement involved here is apparent both from the designation of responsible, ranking officers of the Company to whom cases are to be appealed and the prescribing of a definite period of time within which action must be taken.

The appellants have "admitted and conceded" that failure to pursue the remedies provided by Rule 29 constitutes a bar to an action on the employment contracts (Brief,

³ The rule that remedies provided by contract must first be exhausted before suit may be instituted, is not peculiar to labor contracts; it is applicable to contracts generally. *United States v. Blair*, 321 U. S. 730, 734-737; *United States v. Holpuch Co.*, 328 U. S. 234, 238-243.

p. 8).⁴ However, they contend that they were not furnished copies of the collective bargaining agreement by the appellee and that, therefore, they may bring this action. They point to Rule 39 of the agreement, providing that the appellee shall furnish affected employees with copies (J. App. 19; Appellee's App. 13) and to the November 24, 1948 affidavit where it is stated by four of the five appellants that they had not been furnished with copies of the agreement and that the appellee had never called the attention of the four appellants either to the existence of the agreement or to the Rule 29 adjustment procedure (J. App. 37).⁵ From all of this they argue that the appellee has hindered or actually prevented them from pursuing the remedies provided by the adjustment procedure of Rule 29 as a result of which they are not precluded from bringing this action.

⁴ *Moore v. Illinois Central R. Co.*, 312 U. S. 630, decided in 1940, is not applicable here. The question presented in that case was whether the National Railroad Adjustment Board procedure, provided for by the *Railway Labor Act*, "either was exclusive or was an essential preliminary to judicial proceedings within the doctrine of primary jurisdiction." In answering the question in the negative, the Court stated that the machinery provided by the *Railway Labor Act* for settling disputes was not "based on a philosophy of legal compulsion" but, instead, the Act created "a system for peaceful adjustment and mediation voluntary in its nature." *Elgin, J. & E. R. Co. v. Burley*, 325, U. S. 711, 721, f. n. 11.

In the instant case the adjustment procedure of Rule 29 together with the rights subject to adjustment are established by contract and not by the *Railway Labor Act*. *Elder v. New York Cent. R. Co.* (C. C. A. 6, 1945) 152 F. 2d 361, 364. Unlike the Act, the collective bargaining agreement, including its provisions for the adjustment of grievances, is based on a philosophy of legal compulsion. The parties, having obligated themselves to adjust grievances in the manner prescribed by Rule 29, must exhaust the remedies there provided. *Williams v. Atchison, T. & S. F. Ry. Co.* (1947), 356 Mo. 967; 204 S. W. 2d 693, 695-696; cert. den. 333 U. S. 854; 40 Op. Atty. Gen. No. 59 (Dec. 29, 1942), cited in *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, at 734, 735, 737, and in dissenting opinion, p. 756.

⁵ The credibility of appellants' affidavit is questionable. It was made on November 24, 1948, and states unequivocally that the four affiants never received copies of the agreement. But two weeks before, on November 9, 1948, when the four affiants were being examined in the taking of their depositions, they testified that while they recalled receiving a book of safety regulations, they did not remember what was contained in another book received by them at the time of their employment. (J. App. 41 (appellant Minor); 42 (appellant Brown); 52, 53, 54 (appellant Huntley); 55, 56, 57 (appellant Oglesby)). Also noteworthy is the fact that, while the affidavit recites the names of all five appellants as affiants, appellant Bessie Crawford did not sign it. Indeed it would have been a perilous act for her to have signed the affidavit since she testified when she gave her deposition that she did receive a book of rules that had been entered into between the appellee and the union although she described the book as a "fake" (J. App. 45, 46, 49, 50).

Appellants' argument disregards the nature and binding effect of the collective bargaining agreement involved in this case. This agreement was entered into with the appellee by appellants' agent, the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers of the Railway Employees' Department, A. F. of L.⁶ As principals, appellants acquired such rights as they possess because those rights were created by the agreement. However, the agreement also limited those rights and the remedies pertaining to them and it made binding upon the appellants all of its provisions, including Rule 29. *Williams v. Atchison, T. & S. F. Ry. Co.*, (Mo. 1947), 356 Mo. 967; 204, S. W. 2d 693, 695-696; cert. den. 333 U. S. 854; *Elder v. New York Cent. R. Co.*, (C. C. A. 6, 1945), 152 F. 2d 361, 364; *Steele v. L. & N. R. Co.*, 323 U. S. 192.⁷ And the agreement's binding effect is in nowise altered because the appellants did not consent to the agreement or "did not see or sign or know anything further about it." *Lewellyn v. Fleming*, (C. C. A. 10, 1946), 154 F. 2d 211; cert. den. 329 U. S. 715; *Earle Restaurant v. O'Meara*, 82 U. S. App. D. C. 49, 50; 160 F. 2d 275, 276. In short when each appellant was employed by the appellee, she acquired her seniority and other rights by virtue of the collective bargaining agreement and in doing so she accepted all the conditions attached thereto including the method prescribed for settling disputes. *Williams v. Atchison, T. & S. F. Ry. Co.*, supra, p. 696.

As is evident from their complaint, appellants readily agree that the collective bargaining agreement provided them with certain benefits, which in this action they seek to have the courts protect from alleged violations, but at

⁶ Appellants recognize that, at the time the collective bargaining agreement was entered into as well as at the time the grievances of which they complain arose, the union was the statutory representative of the craft or class to which they belong (J. App. 2-3).

⁷ The problem of discrimination dealt with in the *Steele* case is not found here. Originally appellants contended that the union and the appellee conspired to violate the appellants' rights under the contract but at the argument on the motion for summary judgment they admitted that there were no facts to support that charge (J. App. 38).

the same time they deny that at least some of the provisions of the agreement, which impose obligations, apply to them. Thus they would choose what they desire from the agreement and reject the rest. But that they cannot do because, in light of the nature and binding effect of the collective bargaining agreement, when they accepted a part, their rights, they also accepted the rest, their duties. “* * * if one accepts the benefits of an agreement, he must likewise bear its burdens”. *Aden v. Louisville & N. R. Co.*, (Ky. 1921), 276 S. W. 511; *Perras v. Terminal R. Ass’n of St. Louis*, (Mo. App. 1941), 154 S. W. 2d 417, 420. Therefore, whether appellee furnished appellants with copies of the agreement is not material to the question before the Court.

Appellants’ argument also overlooks the fact that, during the time they were actively employed by the appellee, they knew of the provisions of the collective bargaining agreement, including the procedure provided by Rule 29 for the adjustment of employees’ grievances. This is apparent from their signed and verified complaint which was properly considered by the District Court in deciding the motion for summary judgment (J. App. 38).⁸ Rule 56, Fed-

⁸ Appellants’ verification is not set forth in the joint appendix. In the complaint filed, it reads:

District of Columbia, ss:

We, Maddie Minor, Lucile Brown, Bessie Crawford, S. M. Huntley and Ruth Oglesby, being first duly sworn, on oath say that we have read the foregoing complaint, by us subscribed, and that we know the contents thereof, and that the facts stated of our own knowledge are true, and that those stated on information and belief we believe to be true.

MADDIE MINOR
LUCILE BROWN
BESSIE CRAWFORD
SHANNIE M. HUNTLEY
RUTH G. OGLESBY

Subscribed and sworn to before me this 7th day of November, 1947.
(Seal)

.....
Notary Public, D. C.

The original verification contains no signature of the notary public but the impressed notary public’s seal sets forth the name of Charles S. Brown. The copy of complaint and verification served on appellee shows a notary public signature of Charles S. Brown. It is believed that Charles S. Brown notary public is Charles S. Brown attorney for appellants in this action.

eral Rules of Civil Procedure; *Fletcher v. Krise*, 73 App. D. C. 266, 268; 120 F. 2d 809, 811.

In paragraph 5 of their complaint (J. App. 2-4), appellants set forth rules or parts of rules of the collective bargaining agreement which pertain to their alleged seniority rights. Immediately following those quoted provisions of the agreement, the *verified* complaint states (J. App. 4):

Plaintiffs allege that during their employment they were governed by the foregoing rules, and during their employment they abided by them * * *.

For the appellants to have "during their employment" abided by those rules of the agreement, by which they were governed, they had to know of them. Therefore, they had actual knowledge of the collective bargaining agreement even if the appellee did not furnish them with copies.

In addition to their knowledge of the agreement's provisions which conferred rights upon them, the appellants "during their employment" were also acquainted with the agreement's adjustment procedure. In their *verified* complaint they alleged (J. App. 7-8):

The union, defendant herein, assumed the statutory duty as statutory representative for the class to which plaintiffs belong, and pursuant to such statutory duty the union entered into and executed a collective bargaining agreement, effective January 16, 1943, with the company for the benefit of the class or craft to which plaintiffs belong. *By the terms and provisions of said agreement and by the duty reposed by the statute aforesaid, in the event of a dispute between the employer and an employee or employees growing out of grievances, or out of the interpretation or application of agreements concerning rates, rules or working conditions, the union is bound and is charged with the duty of interceding on behalf of the interests and rights of of the employee or employees to the end that the matters in issue are adjusted.* Notwithstanding the union's duty in the premises it failed, refused and neglected to prosecute the rights and interests of plaintiffs in said agreement, *although often requested so to*

*do, and with full knowledge of all the facts of the company's conduct disregarding the rights of the plaintiffs. To the contrary, plaintiffs allege on information and belief, and relying on such to be the facts, that the said union and the said company entered into a collusive combination, unlawful agreement and conspiracy, at a place and time unknown to plaintiffs, but at a time prior to the commencement of the grievances herein complained of, to deprive, destroy, and eliminate plaintiffs' property rights in the aforesaid agreement of seniority, status, and other contract benefits, which plaintiffs were led to believe governed the conditions of their employment to the end and object in view of ultimately depriving plaintiffs of their livelihood and employment. * * **

Plaintiffs at no time acquiesced in or consented to such derogation and deprivation of their property rights, but, to the contrary appealed to said union to protect their property rights and interests, which said union failed, refused and neglected to do, whereby plaintiffs have suffered greivous and irreparable damage.⁹

(Italics supplied).

Those allegations show that, at the time their grievances arose, the appellants knew of the adjustment procedure provided in the agreement. They "often requested" the union to protect their rights; they "at no time acquiesced in or consented to such derogation and deprivation of their property rights, but, to the contrary, they appealed to said union" to protect those rights. The union "by the terms and provisions of said agreement" was charged with the duty of acting on behalf of the appellants in the adjustment of their grievances.

But the adjustment procedure provisions of the agreement (Rule 29),¹⁰ by which the union was "charged with

⁹ Appellants at the time of the argument on the motion for summary judgment in the District Court admitted "that there are no facts to support the allegations in the complaint of collusion by the defendants" (J. App. 38).

¹⁰ Rule 30 (Appellees' App. 11) provides that, if a satisfactory adjustment cannot be made under Rule 29, the case shall be handled in accordance with the Railway Labor Act.

the duty" of protecting the rights of appellants, also placed upon the appellants the obligation of making their grievances known to the appellee, since it is there provided that cases of grievances "shall be taken to the foreman, general foreman, master mechanic and superintendent, each in their respective order *by the employe*, the duly authorized committee or his General Chairman." (Italics supplied). Since the appellants knew that "by the terms and provisions of said agreement" the union had a responsibility with respect to their grievances, they also must have known that they had a like responsibility (and, if the union refused to act, the sole responsibility) to take their cases to the designated officials of the appellee. That such was the case is also evident from the complaint. In paragraph 6 (J. App. 5), the appellants alleged that "the company has failed, refuses and continues to refuse to abide by the provisions of said contract although often demanded to so do." Those demands, whatever they were, had to be made by appellants since, as they alleged, the union "failed, refused and neglected" to intercede on their behalf and to prosecute and protect their rights (J. App. 7-8). Therefore, the appellants being so informed of the agreement's adjustment procedure, they cannot now contend that they were hindered or prevented from presenting their grievances for adjustment because of the appellee's alleged failure to furnish them with copies of the collective bargaining agreement.

Appellant's admission in their verified complaint of knowledge of the adjustment procedure provisions of the agreement is not controverted by the November 24, 1948 affidavit (J. App. 37). In that affidavit each of the four affiants stated (1) that she had never been furnished with a copy of the collective bargaining agreement, (2) that the appellee had never called her attention to the existence of the agreement, and (3) that the appellee had never called to her attention the Rule 29 adjustment procedure. It is to be noted that the affidavit is limited to the alleged failure

of the appellee to make known the existence of the agreement and Rule 29 thereof. The affiants did not state that they did not know from any source of that agreement and Rule 29. Therefore, in light of the above quoted allegations of the complaint, the only inference to be drawn from the affidavit is that, while the affiants learned nothing from the appellee about the provisions of the agreement, they knew of that agreement and Rule 29 thereof from some other source or sources in time for them to have pursued the adjustment remedies required by the agreement.¹¹

There is no genuine issue of material fact in this case. Appellants have admitted that they did not comply with the requirements of Rule 29 of the agreement although, as the record shows, they knew of the adjustment procedure. As a matter of law, appellants' failure to pursue the remedies provided in Rule 29 bars them from bringing this action. Thus, every necessary condition existed for the application of Rule 56, Federal Rules of Civil Procedure by the District Court.

CONCLUSION.

In view of the foregoing it is respectfully submitted that the judgment of the District Court should be affirmed.

Respectfully submitted,

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May, 1949.

¹¹ With respect to the possible sources of appellants' knowledge of the terms of the collective bargaining agreement, it is to be noted that the Railway Labor Act required the filing, and in that manner the publishing, of the agreement with the National Mediation Board. Act of May 20, 1926, c. 347, sec. 5 (44 Stat. 580); as amended, Act of June 21, 1934, c. 691, sec. 5, (48 Stat. 1195); U. S. C., Title 45, sec. 155, paragraph Third (e).

SUPPLEMENT.**Relevant Rule of Civil Procedure.**

Rule 56, Federal Rules of Civil Procedure, as amended March 19, 1948, (following section 723C, Title 28 U.S.C.A.), provides as follows:

RULE 56. SUMMARY JUDGMENT.

a. **FOR CLAIMANT.** A party seeking to recover upon a claim, counter-claim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

b. **FOR DEFENDING PARTY.** A party against whom a claim, counter-claim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

c. **MOTION AND PROCEEDINGS THEREON.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

d. **CASE NOT FULLY ADJUDICATED ON MOTION.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial con-

troverſy and what material facts are actually and in good faith controverted. It ſhall thereupon make an order ſpecifying the facts that appear without ſubſtantial controverſy, including the extent to which the amount of damages or other relief is not in controverſy, and directing ſuch further proceedings in the action as are juſt. Upon the trial of the action the facts ſo ſpecified ſhall be deemed eſtabliſhed, and the trial ſhall be conducted accordingly.

e. **FORM OF AFFIDAVITS; FURTHER TESTIMONY.** Supporting and oppoſing affidavits ſhall be made on perſonal knowledge, ſhall ſet forth ſuch facts as would be admiſſible in evidence, and ſhall ſhow affirmatively that the affiant is competent to testify to the matters ſtated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit ſhall be attached thereto or ſerved therewith. The court may permit affidavits to be ſupplemented or oppoſed by depositions or by further affidavits.

f. **WHEN AFFIDAVITS ARE UNAVAILABLE.** Should it appear from the affidavits of a party oppoſing the motion that he cannot for reaſons ſtated preſent by affidavit facts eſſential to juſtify his oppoſition, the court may reſuſe the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or diſcovery to be had or may make ſuch other order as is juſt.

g. **AFFIDAVITS MADE IN BAD FAITH.** Should it appear to the ſatisfaction of the court at any time that any of the affidavits preſented purſuant to this rule are preſented in bad faith or ſolely for the purpoſe of delay, the court ſhall forthwith order the party employing them to pay to the other party the amount of the reaſonable expenſes which the filing of the affidavits cauſed him to incur, including reaſonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 10,096.

MADDIE MINOR, LUCILE BROWN, BESSIE CRAWFORD, S. M.
HUNTLEY, RUTH OGLESBY, *Appellants*,

v.

THE WASHINGTON TERMINAL COMPANY, INCORPORATED,
Appellee.

Appeal from a Part of a Summary Judgment of the United
States District Court for the District of Columbia.

APPELLEE'S APPENDIX.

AGREEMENT

between

THE WASHINGTON TERMINAL COMPANY

and

POWER PLANT EMPLOYEES AND SHOP LABORERS

Represented by the

INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS,
HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS

of the

Railway Employes' Department, A. F. of L.

Effective January 16th, 1943

AGREEMENT

RULE 1

These rules govern the hours of service and working conditions of the classes of employes shown below, working in and about shops, power plants, train yards and engine terminals.

- A. 1. Stationary Engineers
- B. 2. Watertenders
- 3. Stationary firemen
- 4. Power Plant Oilers
- 5. Conveyormen
- 6. Ice Tankman
- 7. Coal passers (Main Power Plant)
- C. 8. Engine Watchmen and Fire Builders
- 9. Ash Pit Men
- 10. Turntable Operators
- 11. Coal Wharf Operator (Not applicable to present incumbents)
- 12. Coal Cutters
- 13. Sand House Men
- 14. Coal Wharf Men
- 15. Lubricator Fillers and Supplymen (Not applicable to present incumbents)
- 16. Engine Washers

- D. 17. Enginehouse Laborers
- 18. Car Department Laborers
- 19. Coal Passers (Eckington and Ivy City Power Plants)
- 20. Locomotive Cleaners

The classification of Coalpassers in Power Plants applies to employees assisting in work other than common laborer, such as dumping coal, passing coal within reach of firemen, assisting in handling ashes and dusting flues.

RULE 2

Normal working hours will be bulletined for all employees. Eight hours shall constitute the basic work day and not less than 48 hours will constitute a week's work for all regular assignments.

RULE 3

(a) There may be one, two or three shifts employed. The starting time of any shift shall be arranged by agreement between the local officers and the Employees' Committee, based on actual service requirements.

(b) The time and length of the lunch period shall be subject to mutual agreement.

(c) Where three shifts are employed in continuous service, the spread of each shift shall consist of eight consecutive hours, including an allowance of twenty minutes for lunch within the limits of the fifth hour.

(d) Employees on the various shifts will not be started at other than regular starting time of the shift except where the requirements of the service cannot be met, subject to paragraph (a) of this rule.

RULE 4

An employee who is absent from work for any cause and has not arranged for a definite time to resume duty, will not be permitted to work except on approval of ranking officer, unless he gives his foreman notice of his intention to report for duty at least one hour before the expiration of the regular quitting time of the shift on which he is employed, on the day previous to the day on which he intends to report for work.

When unable to comply with the above provisions, the employe must give a reasonable excuse for his inability to do so, to the ranking officer, before being allowed to return to work.

In case an employe is unavoidably kept away from work on account of sickness, or for any other good cause, he shall notify his foreman as early as possible, either by telephone, or messenger, or United States Mail. Employes absenting themselves for five (5) days without notifying the Management shall be considered out of service and dropped from the rolls and seniority roster, unless a justifiable reason can be shown as to why notice was not given or sent.

RULE 5

All service performed outside of bulletined hours will be paid off at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

Work performed on Sundays and the following legal holidays, viz: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, or the day observed, will be paid for at the overtime rate specified in the rate schedule, with a minimum of four (4) hours at pro-rata rate for two hours and forty minutes work or less, except employes who are assigned to positions that require filling seven (7) days per week will be assigned one regular off day in each week, and if required to work on such off day will be paid at the rate of time and one-half times the regular rate. Where such assigned relief day is not a Sunday or any of the legal holidays enumerated above, work performed on Sundays and such holidays shall be paid for at straight time rates.

Employes assigned to work six (6) day positions will be paid straight time when required on other than their regular assigned relief days, to fill the places of employes designated in the second paragraph of this rule.

(This rule does not apply to monthly-rated men.)

RULE 6

For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed.

Employees shall not be required to render service for more than two (2) hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

Employees called or required to report for service and reporting and not used, will be paid a minimum of four (4) hours at straight time rates.

Employees called or required to report for service and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to render only such service as called for, or other emergency service which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement.

Employees will be allowed time and one-half on minute basis for service performed continuously in advance of the regular working period with a minimum of one (1) hour, the advance period to be not more than one (1) hour.

Except as otherwise provided for in this rule, all overtime beyond sixteen (16) hours of service in any twenty-four hour period, computed from starting time of employees' regular shift, shall be paid for at the rate of double time.

(This rule does not apply to monthly rated men.)

RULE 7

Employees required to work during or any part of the lunch period shall receive pay for the length of the lunch period regularly taken at point at straight time and will be allowed necessary time to procure lunch (not to exceed thirty (30) minutes) without loss of time.

This does not apply where employees are allowed the twenty (20) minutes for lunch without deduction therefor.

RULE 8

Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working two days or more on a new shift shall be considered transferred. This does not apply when shifts are exchanged at the request of the employees involved, or when working relief assignments.

Employees accepting positions in the exercise of their seniority rights will do so without expense to the company.

This rule does not prohibit power plant employes periodically changing shifts, or rotation of shifts without expense to the Company.

RULE 9

Employes will not be laid off during regular working hours to equalize overtime.

At points where a sufficient number of employes are employed, employes shall not be required to work two consecutive Sundays. (Holidays to be considered as Sundays under this rule.)

Record will be kept of overtime worked, with the purpose in view of distributing the overtime equally among the employes, insofar as their qualifications will permit.

RULE 10

An employe regularly assigned to work at a shop, Enginehouse, Power Plant, repair track, or inspection point when called for emergency road work away from such shop, Enginehouse, Power Plant, repair track or inspection point, will be paid from the time called to leave home station until his return for all time worked in accordance with the practice at home station, and will be paid straight time rate for straight time hours and overtime rates for overtime hours for all time waiting and traveling.

If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employee from making his regular daily hours at home station.

Where meals and lodging are not provided by railroad, actual necessary expense will be allowed.

RULE 11

Seniority begins at the time the employe's pay starts.

RULE 12

Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their

relative length of service with the railroad, as hereinafter provided.

RULE 13

Seniority rights of all employes shall be confined to the point employed and four subdivisions as follows:

- (a) Stationary Engineers.
- (b) Watertenders, Stationary Firemen, Power Plant Oilers, Conveyormen, Ice Tankmen and Coalpassers (Main Power Plant).
- (c) Engine Watchmen and Fire Builders, Ash Pit Men, Turntable Operators, Coal Wharf Operators, Coal Cutters, Sand House Men, Coal Wharf Men, Lubricator Fillers and Supply Men, Engine Washers.
- (d) Engine House Laborers, Car Department Laborers, Coal Passers (Eckington and Ivy City Power Plants), Locomotive Cleaners.

NOTE 1. Main Power Plant shall be considered a separate seniority point, except for Stationary Engineers, whose seniority will cover all power plants.

NOTE 2. Eckington and Ivy City shall be considered as one point.

NOTE 3. "Point" shall be understood to be place where employed.

NOTE 4. Employes on positions coming within the scope of Group (a) will hold an accumulated seniority in Group (b).

NOTE 5. Employes on positions coming within the scope of Group (b), will hold an accumulated seniority in Group (c) and (d). An employe displaced from Group (b) who has not earned seniority in Group (c) will be permitted to displace junior employes in Group (d).

RULE 14

Employes transferred or promoted from one group to another (as established in Rule 13) will rank in such group from date of transfer, and shall continue to accumulate seniority in the group from which transferred, and may exercise displacement rights in said group when affected by reduction of forces or positions abolished.

RULE 15

When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate for that day, but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed.

RULE 16

When an employe is used on work paying a higher rate of pay for one hour or less in any one day, he will be paid the higher rate on the minute basis, with a minimum of one (1) hour.

RULE 17

Employes serving on night shifts desiring day work shall have preference when vacancies occur, according to their seniority.

RULE 18

When new jobs are created or vacancies occur, they will be bulletined within a period of five (5) days on bulletin boards, from such time vacancies occur, except that temporary vacancies need not be bulletined until the expiration of thirty (30) days from date of such vacancies. Employes will be considered for promotion to jobs, according to seniority and ability. If necessary to fill temporary vacancies, senior employes will be given preference.

RULE 19

Promotions to new jobs or to fill vacancies, will be made as promptly as possible, after bulletin has been posted for a period of five (5) days on bulletin boards at points of employment. Employes desiring the new positions or vacancies stated in notice, will file their application with the officer in charge, whose name appears on the bulletin and shall personally deliver a copy of the application to the local committee. New jobs or vacancies may be filled temporarily pending permanent appointment.

RULE 20

Employes accepting promotions and failing to qualify within thirty (30) days may return to their former positions without loss of seniority.

RULE 21

Employees promoted to supervisory or other positions beyond the scope of this agreement will retain their seniority rights at the point and in the class from which promoted.

RULE 22

Regularly established daily working hours will not be reduced below eight (8) hours to avoid making force reductions.

When force is reduced junior men will be laid off and the senior men on the seniority roster capable of doing the work will be retained.

Four days notice will be given employees affected before reduction in force is made and lists will be furnished the local committee. This does not apply to the seasonal closing of Eckington Power Plant.

When employees laid off by reason of force reduction desire to retain their seniority rights, they must file their address with the officer notifying them of reduction, and notify the same, by letter or other written matter, of any change in address. Failure of employee to do so, or to return to the service in a reasonable time, not over fifteen (15) days, after being notified to return at the last address the employee has given, will forfeit all seniority rights.

Employees restored to service will not be laid off again without four (4) days' advance notice provided in this rule.

RULE 23

In the restoration of forces, employees will be restored to service in accordance with their seniority if available within a reasonable time. The local committee will be furnished with a list of employees to be restored to service.

RULE 24

When the requirements of the service will permit, employees, on request, will be granted leave of absence for a limited time, with privilege of renewal. An employee absent on leave who engages in other employment will lose his seniority, unless special provisions shall have been made therefor by the proper official and committee representing his craft.

The arbitrary refusal of a reasonable amount of leave to employes when they can be spared, or failure to handle promptly cases involving sickness or business matter of serious importance to the employe, is an improper practice and may be handled as unjust treatment under this agreement.

RULE 25

A separate seniority roster will be compiled for each subdivision at each point of employment and will show the names and date of entry of employes into the service of the railroad and date of promotion. Rosters will be revised in January of each year and will be open for correction for a period of sixty (60) days thereafter and will be posted on bulletin boards and copy furnished local committee.

RULE 26

When attending court as witnesses for the company, employes will be reimbursed for reasonable expenses and paid eight (8) hours each day or part thereof including Sundays and holidays for such court service. When necessary the company will furnish transportation and will be entitled to certificates for witness fees in all cases.

When employes are required to report outside of their regular bulletin hours to act as witnesses for the company in investigations they shall be paid at straight time rate.

RULE 27

Employes will be paid off during their regular working hours semi-monthly. Should the regular pay day fall on a holiday or days when shops are closed down, employes will be paid on the next succeeding day.

Where there is a shortage equal to one day's pay, or more in the pay of an employe, a voucher will be issued to cover the shortage.

When and where possible, employes leaving the service of the company will be furnished with time voucher covering all time due within 24 hours at points where vouchers are issued, and within 48 hours at other points.

RULE 28

The exercising of seniority to displace junior employes, which practice is usually termed "rolling" or "bumping"

will not be permitted, except when a job is abolished or an employe is cut off, the employe affected shall have the privilege of displacing a junior employe on any shift.

RULE 29

Should any employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic and superintendent, each in their respective order by the employe, the duly authorized local committee or his General Chairman, within ten (10) days. If stenographic report of investigation is taken the employe or local committee shall be furnished a copy. If the result still be unsatisfactory, the duly authorized general committee, or their representative, shall have the right of appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within ten (10) days of application.

All conferences between local officials and local committee to be held during regular working hours without loss of time to committeemen, except where agreement is not reached, further conference will be held during regular hours.

RULE 30

Should the highest designated railroad official or his duly authorized representative and the duly authorized representative of the employes, as provided in Rule 29, fail to agree, the case shall then be handled in accordance with the Railway Labor Act.

Prior to assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shutdown by the employer nor a suspension of work by the employes.

RULE 31

No employe shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe will be apprised of the precise charge and given reasonable opportunity to secure

the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal.

RULE 32

The company will not discriminate against any committeemen, who, from time to time, are delegated to represent other employes, and will grant leave of absence and free transportation.

RULE 33

Employes temporarily transferred by direction of the management from one point to another will retain their seniority at their regular point of employment.

RULE 34

Employes injured while at work will not be required to make accident reports before they are given medical attention, but will make them as soon as practicable thereafter. Proper medical attention will be given at the earliest possible moment, and employes shall be permitted to return to work without signing a release pending final settlement of the case.

RULE 35

Employes who have given long and faithful service in the employ of the company and who have become unable to handle heavy work to advantage, will be given preference for such light work in their line as they are able to handle.

RULE 36

Good drinking water and ice will be furnished. Sanitary drinking fountains will be provided where necessary. Pits and floors, lockers, toilets and wash rooms will be kept in a clean, dry and sanitary condition, with the assistance of employes. Shops, locker rooms and wash rooms will be lighted and heated in the best manner possible, consistent with the source of heat and light available at the point in question.

RULE 37

No employe will be required to work under a locomotive or car without being protected by proper signals. Where the nature of the work to be done requires it, locomotives and passenger cars will be placed over a pit, if available.

RULE 38

A place will be provided inside all shops and power plants where proper notices of interest confined to subjects in which the management and employes are involved, may be posted.

RULE 39

The railway company will have printed, in book form, copies of the agreement and furnish a copy to each employe affected.

RULE 40

These rules effective January 16th, 1943 are to remain in force until revised in accordance with the procedure required by the Railway Labor Act.

FOR THE WASHINGTON TERMINAL COMPANY,

(s) B. R. TOLSON,
Manager.

FOR POWER PLANT EMPLOYEES AND SHOP LABORERS, REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS,

(s) D. P. MURPHY,
General Chairman.